

***United States Court of Appeals  
for the Second Circuit***



**PETITION**





# 74-2638

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 74-2638

GREENE COUNTY PLANNING BOARD,

Petitioner

v.

FEDERAL POWER COMMISSION,

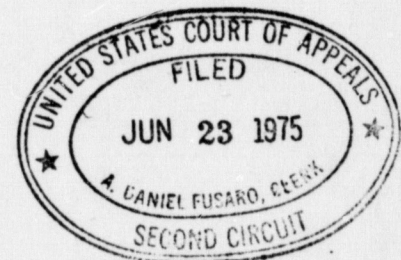
Respondent

POWER AUTHORITY OF THE STATE OF NEW YORK,

Intervenor

ON PETITION TO REVIEW ORDERS  
OF THE FEDERAL POWER COMMISSION

JOINT APPENDIX



ROBERT J. KAFIN  
Attorney for Petitioner  
115 Maple Street  
Glens Falls, New York 12801  
518-793-6631

DREXEL D. JOURNEY  
Attorney for Respondent  
Federal Power Commission  
825 N. Capitol Street, N.E.  
Washington, D.C. 20426

SCOTT B. LILLY,  
Attorney for Intervenor  
Power Authority of the State  
of New York  
10 Columbus Circle  
New York, New York 10019  
212-265-6510

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**PAGINATION AS IN ORIGINAL COPY**



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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Power Authority of the  
State of New York

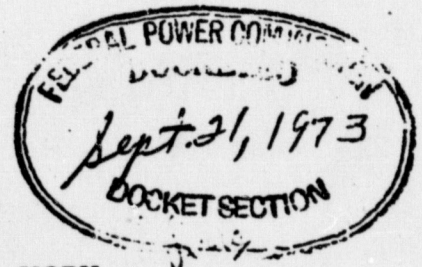
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Docket No. E-

8414

FILED  
SEP 21 1973  
FEDERAL POWER COMMISSION  
WASHINGTON, D.C.

APPLICATION FOR A PRESIDENTIAL  
PERMIT TO CONSTRUCT, OPERATE, MAINTAIN  
AND CONNECT ELECTRIC TRANSMISSION FACILITIES  
AT THE INTERNATIONAL BOUNDARY BETWEEN THE  
UNITED STATES AND CANADA



POWER AUTHORITY OF THE STATE OF NEW YORK

SEPTEMBER 1973



BEFORE THE  
FEDERAL POWER COMMISSION

Power Authority of the  
State of New York

)  
)  
Docket No. E-

APPLICATION FOR A PRESIDENTIAL  
PERMIT TO CONSTRUCT, OPERATE, MAINTAIN  
AND CONNECT ELECTRIC TRANSMISSION FACILITIES  
AT THE INTERNATIONAL BOUNDARY BETWEEN THE  
UNITED STATES AND CANADA

1. Power Authority of the State of New York (hereinafter referred to as "Applicant" or "Authority") having its office and principal place of business at 10 Columbus Circle, New York, New York 10019, hereby makes application to the Federal Power Commission for a Presidential Permit under the provisions of Executive Order 10485 of September 3, 1953 to authorize the construction, operation, maintenance and connection of electric transmission facilities described herein at a point on the United States-Canadian boundary in the Town of Ft. Covington, Franklin County, New York.

2. The name, title and post office address of the person to whom correspondence in regard to this application shall be addressed is as follows:

Mr. George T. Berry  
General Manager and Chief Engineer  
Power Authority of the  
State of New York  
10 Columbus Circle  
New York, New York 10019

It is likewise requested that a copy of each such communication be sent to Applicant's Washington, D. C. attorney addressed as follows:

John C. Mason, Esquire  
Morgan, Lewis & Bockius  
1140 Connecticut Avenue, N. W.  
Washington, D. C. 20036

3. Applicant is a corporate municipal instrumentality, a body corporate and political subdivision of the State of New York exercising governmental and public powers. Applicant is also a municipality within the meaning of Section 3(7) of the Federal Power Act.

Applicant was created by the Power Authority Act, Chapter 772, Laws of New York, 1931, as amended (which is set forth as Exhibit A to Authority's revised application for license for Project No. 2729 filed July 24, 1973) for the purpose of effectuating the policy of the State of New York as declared in Section 1001 of the Public Authorities Law, i.e., to develop the hydro-electric potential of the Niagara and St. Lawrence rivers and



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otherwise to assist in providing a continuous and adequate supply of dependable electric power and energy for the benefit of the people of the State of New York.

Applicant is expressly authorized by the Power Authority Act to construct and operate throughout its area of service such hydroelectric pumped storage projects as it deems necessary or desirable to supplement the State's supply of electric power and energy.

Applicant is also authorized to construct and operate base load generating facilities to supply power for the Metropolitan Transportation Authority and its subsidiaries and the New York City Transit Authority and to construct and operate nuclear power plants as needed to supply specific needs set forth in state law including the requirements of its municipal, cooperative, industrial and other customers.

Applicant is also authorized to construct and operate facilities for the transmission of electric power.

4. No control or ownership is exercised by Applicant in any other organization or over Applicant by any other organization.



5. The facilities at the border of the United States and Canada will consist of a single circuit steel lattice type tower with supporting structures, land and appurtenant facilities to be owned, constructed, operated and maintained by Applicant connected at the international border with a similar 765 kv circuit suspended from a similar tower on the Canadian side of the border. The connection at the border of New York State and the Province of Quebec will be at a point on the border about two miles east of the Village of Ft. Covington. See Reference Map, Exhibit I hereto. The facilities are described in more detail in Exhibit II hereto. Exhibit III shows the Crossing Structure Outline and Exhibit IV contains the Plan and Profile of Crossing.

6. Pursuant to the provisions of Article VII of the New York Public Service Law, Authority has applied to the Public Service Commission of the State of New York for a Certificate of Environmental Compatibility and Public Need for the 765 kv single circuit transmission line facilities to be constructed in the United States to transmit energy to and from the connection at the border described herein.

7. Pursuant to Section 1005 of the Public Authorities Law, the Trustees of Applicant unanimously adopted the following resolution at a meeting held on July 11, 1973 authorizing the filing of this application:

RESOLVED, That the Authority hereby determines pursuant to the power vested in it by section 1005 of the Power Authority Act that there is a need for transmission facilities consisting of (i) a single circuit 765 kv transmission line between a point on the international boundary between the United States and Canada approximately two miles east of Fort Covington, New York (or such other point as may be approved by the Federal Power Commission) and a substation to be constructed near Massena, New York, and (ii) a single circuit 765 kv transmission line between said Massena substation and a 765 kv substation to be constructed in the Town of Marcy, New York adjacent to or near the Edic substation of Niagara Mohawk Power Corporation, and (iii) two 230 kv transmission lines connecting such 765 kv lines with the Authority's St. Lawrence project in order to permit the exchange of power between the Hydro-Electric Commission of Quebec and the Authority and to interconnect the Authority's St. Lawrence and Niagara projects; and be it further

RESOLVED, That the General Manager is hereby authorized to apply to the Federal Power Commission and the International Boundary Commission for approval of such portions of such transmission facilities as are located at the borders of the United States and to the Public Service Commission for a Certificate of Environmental Compatibility and Public Need of such facilities pursuant to Article VII of the Public Service Law, and to take all such further action and to make such other applications to Governmental Agencies, both Federal and State, as may be necessary or desirable to effectuate the purpose and intent to the foregoing resolution.

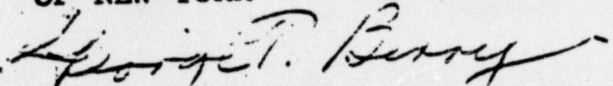


8. Applicant does not have any contracts with a foreign government, or private concerns, which in any way relate to the control or fixing of rates for the purchase, sale or transmission of electric energy and which may serve in any way to restrict or prevent competing American companies from extending their activities.

9. Applicant has no landing license, or permit, granted by a foreign government or any of its agencies in connection with the transmission of electric energy between the United States and a foreign country.

10. IN WITNESS WHEREOF Applicant has caused its name to be hereunder signed by George T. Berry, its General Manager and Chief Engineer.

POWER AUTHORITY OF THE STATE  
OF NEW YORK



George T. Berry

General Manager and Chief Engineer

By 

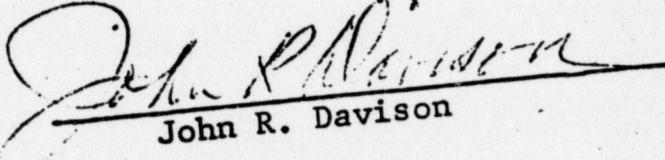
John R. Davison

Associate General Counsel

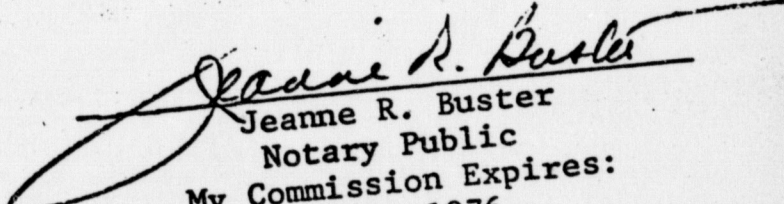
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DISTRICT OF COLUMBIA ) SS:

John R. Davison, being first duly sworn, deposes and says that he is Associate General Counsel of the Power Authority of the State of New York, the Applicant for a Presidential Permit to construct, operate, maintain and connect electric transmission facilities at the international border between the United States and Canada; that he has read the foregoing application and knows the contents thereof; and that the same are true to the best of his knowledge and belief.

  
John R. Davison

Sworn to and subscribed before me this 21st day of  
September, 1973.

  
Jeanne R. Buster  
Notary Public  
My Commission Expires:  
October 15, 1976

[SEAL]





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**EXHIBIT II****DESCRIPTION OF TRANSMISSION LINE  
FACILITIES AT THE BORDER**

The 765 kv transmission line facilities at the New York-Quebec international border will be constructed on a single circuit steel lattice structure.

1. Design Voltage --  
765 kv - 3 phase - 60 Hz.
2. Conductors --  
4-1,351,500 circular MIL 45/7 A.C.S.R. per phase.
3. Overhead Ground Wires --  
2 - 7 No. 6 Alumoweld per structure.
4. Insulators --  
35 ANSI Class 52-5; 5-3/4" x 10" units per string.
5. Materials of Tower and Arms --  
Steel (ASTM Type A588)
6. Material of Foundations --  
Reinforced Concrete
7. Design Standards for Tower and Foundations --  
Equivalent to or exceeding the safety rules contained in the Sixth Edition of the National Bureau of Standards Handbook 81 and Supplement 1 thereto, commonly referred to as "Part 2 of the National Electrical Safety Code."



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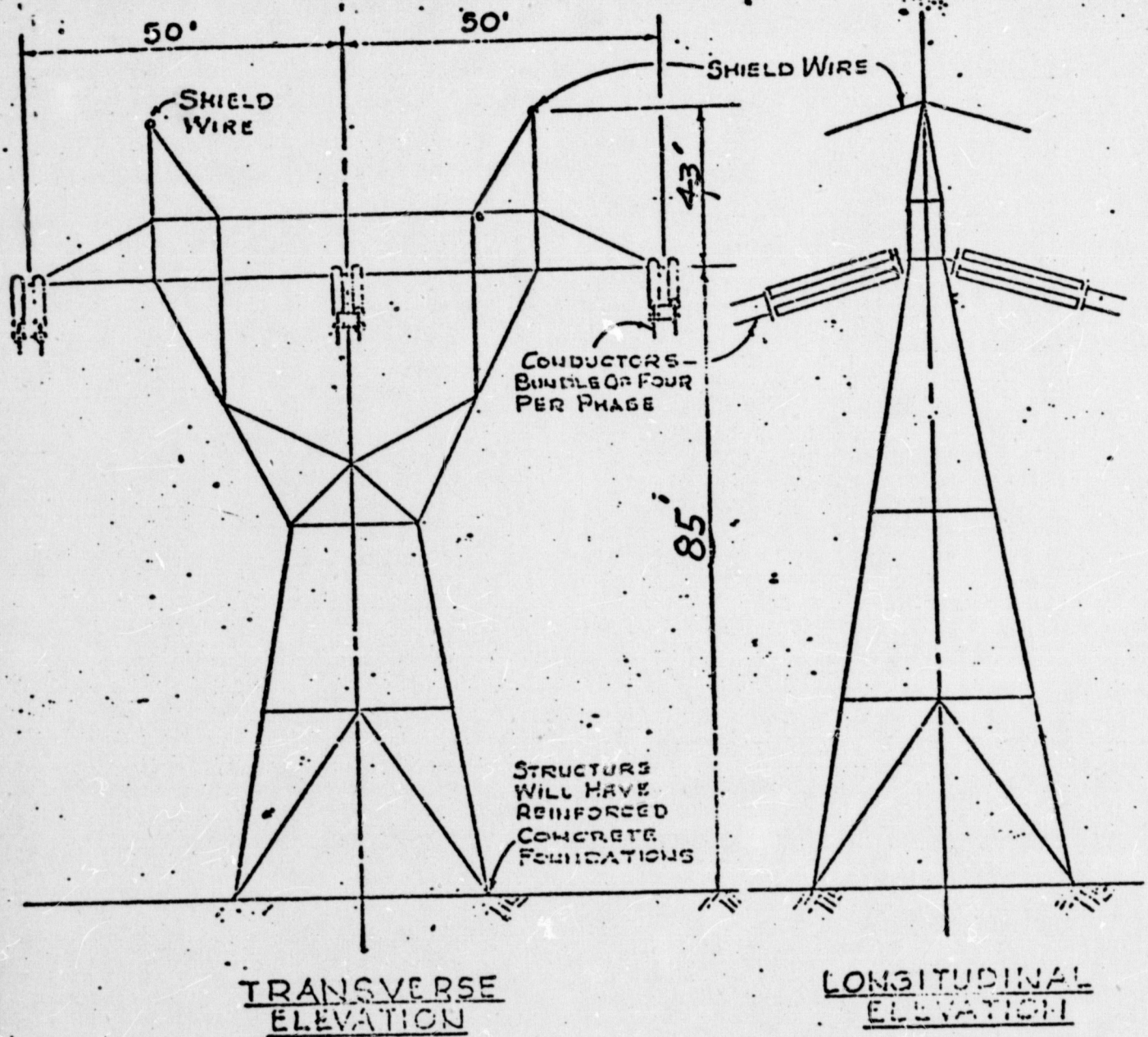


EXHIBIT III  
CROSSING STRUCTURE OUTLINE  
(SINGLE CIRCUIT 765KV)

SCALE 3/8" = 10'

765 KV STRUCTURE OWNED AND  
MAINTAINED BY QUEBEC HYDRO-  
ELECTRIC COM. MISSION.

BOUNDARY  
MARKER 749

NORTH

500'

590'

500'

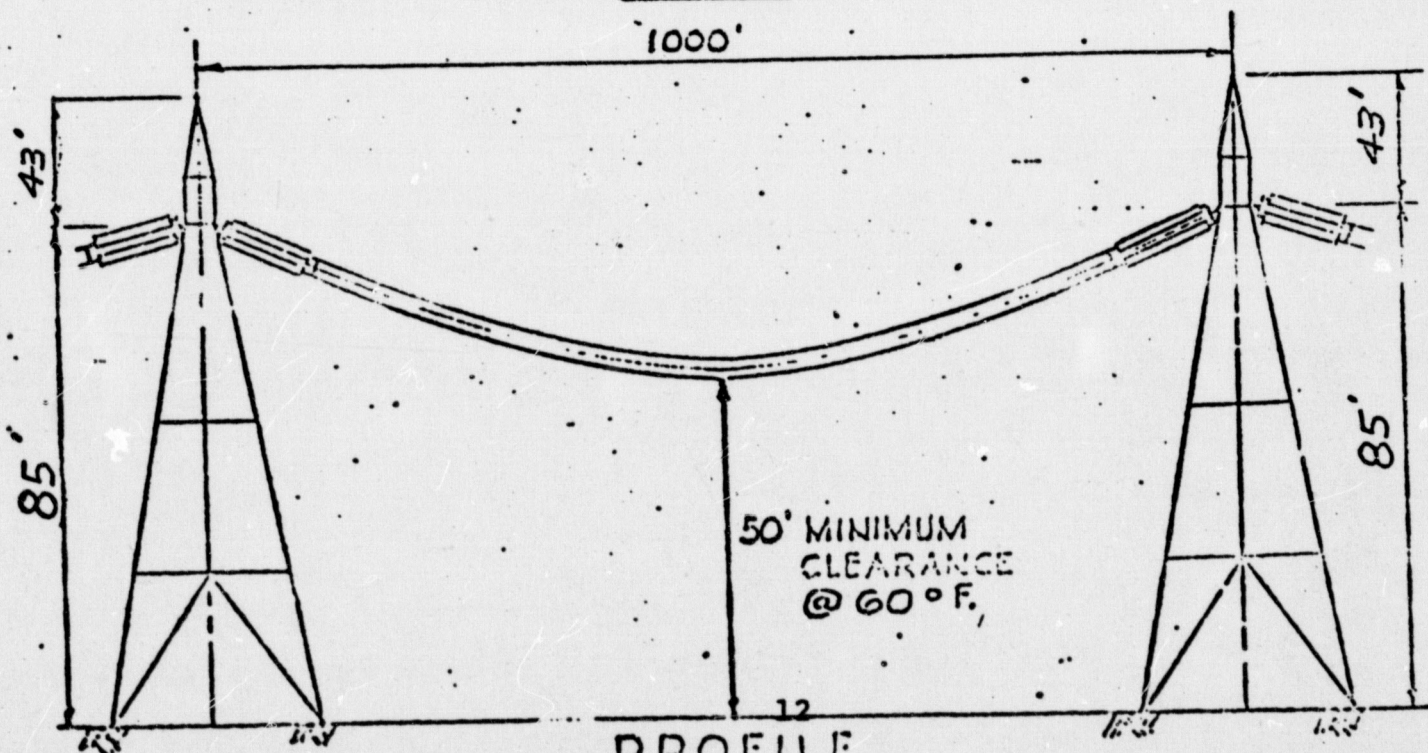
74°27'-16" LONGITUDE  
44°59'-49" LATITUDE

QUEBEC-CANADA  
NEW YORK-UNITED STATES

765 KV STRUCTURE OWNED AND  
MAINTAINED BY POWER AUTHORITY  
STATE OF NEW YORK.

PLAN

1000'



PROFILE

EXHIBIT IV

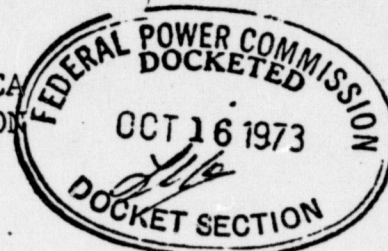
PLAN AND PROFILE OF CROSSING



Pages 13 - 44 are intentionally omitted

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UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION



Power Authority of the State )  
of New York )

Docket No. E-8414

NOTICE OF APPLICATION FOR  
PRESIDENTIAL PERMIT

(October 16, 1973)

Take notice that on September 21, 1973, the Power Authority of the State of New York (Applicant) filed with the Federal Power Commission, pursuant to Executive Order No. 10485 of September 3, 1953, an application for authorization to construct, operate, maintain and connect certain electric transmission facilities at a point on the United States-Canadian boundary near the Town of Fort Covington, Franklin County, New York. Applicant is an agency of the State of New York and is authorized to construct and operate such facilities.

The Facilities proposed to be constructed at the United States-Canadian border will consist of a single circuit steel lattice-type tower with supporting structures, land and appurtenant facilities. At the international border these facilities will connect with a 765 kv circuit suspended from a similar tower on the Canadian side of the border. The connection will be at a point on the border between the State of New York and the Province of Quebec about two miles east of the Town of Fort Covington, N

Applicant has applied to the Public Service Commission of the State of New York for a Certificate of Environmental Compatibility and Public Need for the 765 kv single circuit transmission line facilities to be constructed in the United States for the purpose of transmitting energy to and from the proposed connection at the international border.

DC-13



000046

Docket No. E-8414

- 2 -

Any person desiring to be heard or to make any protest with reference to said application should on or before November 7, 1973, file with the Federal Power Commission, Washington, D. C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb

Secretary

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Power Authority of the State of New York      Docket No. E-8414

PETITION TO INTERVENE OF THE  
GREENE COUNTY PLANNING BOARD

1. Petitioner, Greene County Planning Board, is a duly constituted planning board under provision of Section 239b, Article 120B of the County Law of the State of New York. The Greene County Planning Board was established on March 15, 1968 by resolution of the Greene County Legislature. The purpose of the Board is to develop a comprehensive plan to guide future growth and development in the County and act as an advisory body for the County Legislature by presenting neutral and objective recommendations.
2. Greene County Planning Board opposes the application herein for a Presidential Permit because the facilities to be constructed thereunder are part of a comprehensive integrated plan including Project Nos. 2685 and 2729 and additional generating and transmission facilities which will have a materially adverse impact on Greene County.
3. Communications concerning this petition and anything relating to Docket No. E-8414 should be sent to Petitioner's Attorneys:

Kafin and Needleman  
8 Pine Street  
Glens Falls, New York 12801  
(518) 793-6631

With a copy to:

Greene County Planning Board  
P.O. Box 514  
Cairo, New York 12413

Att: William White, Jr., Chairman



4. The Greene County Planning Board has responsibility for the overall coordination of the development of Greene County, and is opposed to additional transmission corridors and lines and power plants in the County that are inconsistent with the historic, social, economic and cultural qualities of Greene County. The Planning Board believes that this project is unnecessary, ill planned and will cause environmental damage at its location as well as in other areas where related facilities will be built.

5. The Greene County Planning Board also opposes this application on the ground that the proposals do not accord with any sensible notion of comprehensive planning, in that a piecemeal approach is employed therefore depriving concerned parties of the opportunity for an overall evaluation.

6. The Greene County Planning Board also opposes this project on the ground that it is being considered separate and apart from planned facilities for base load generation in the Athens area of Greene County, as well as the present proceedings concerning Project No. 2685, in which the Planning Board is a party Intervenor, and Project No. 2729 in which the Planning Board has intervened.

7. Petitioner hereby requests (a) leave to intervene, (b) a public hearing on the application, (c) an environmental impact statement covering the proposed facilities and the entire 765kv network, and related generation, of which the facilities

described in the application will be a part, (d) consolidation of the issues in Docket No. E-8414 with Projects No. 2685 and 2729 and (e) the right to be present at any and all conferences between the applicant and any representatives of the Commission or Commission Staff.

Respectfully submitted,

KAFIN AND NEEDLEMAN

By \_\_\_\_\_

Attorneys for Petitioner  
8 Pine Street  
Glens Falls, New York 12801  
(518) 793-6631



UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Power Authority of the )  
State of New York )

Docket No. E-8414

ANSWER TO PETITION OF  
GREENE COUNTY PLANNING BOARD  
TO INTERVENE

POWER AUTHORITY OF THE STATE OF NEW YORK

November, 1973

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Power Authority of the )  
State of New York )

Docket No. E-8414

ANSWER TO PETITION OF  
GREENE COUNTY PLANNING BOARD  
TO INTERVENE

1. Power Authority of the State of New York (Applicant) on September 21, 1973 filed an application with the Commission pursuant to Executive Order No. 10485 of September 3, 1953 for a Presidential Permit to construct, operate, maintain and connect electric transmission facilities at the international boundary between the United States and Canada at a point in the Town of Ft. Covington, Franklin County, New York. Public notice of such application was given by the Commission on October 16, 1973.

2. The facilities for which the Presidential Permit is sought consist of one single circuit steel lattice type tower about 500 feet from the border, the wires constituting a 765 kv circuit which will be connected to a similar circuit at the border supported by a similar tower in Canada to be constructed by the Quebec Hydro-Electric Commission about 500 feet from the border, and the required land rights within the United States (See Exhibit IV to Application for Presidential Permit).



3. On November 7, 1973 Applicant received by mail a "Petition to Intervene" of the Greene County Planning Board (Petitioner). In its petition the Board asks not only "(a) leave to intervene" but also for "(b) a public hearing on the application, (c) an environmental impact statement covering the proposed facilities and the entire 765 kv network, and related generation, of which the facilities described in the application will be a part, (d) consolidation of the issues in Docket No. E-8414 with Projects No. 2685 and 2729 and (e) the right to be present at any and all conferences between the applicant and any representatives of the Commission or Commission Staff".

4. Applicant opposes the petition to intervene on the grounds that Greene County Planning Board does not have authority under New York law to claim a right to intervene and does not have an interest of such a nature that intervention is appropriate or necessary to the administration of the Executive Order under which the application is made.

5. The border crossing involved is approximately 180 miles north of the nearest point on the northern boundary of Greene County. See map attached hereto as Exhibit A.

6. The petition to intervene fails to demonstrate any interest of Greene County Planning Board in the facilities which are the subject of the application. All the petition alleges is "The Planning Board believes that this project is unnecessary, ill-planned and will cause environmental damage at its location as well as in other areas where related facilities will be built". The only related facilities referred to

in the application for Presidential Permit for the border crossing are (i) a single circuit 765 kv transmission line between a point on the international boundary about two miles east of the Village of Ft. Covington, New York and a substation to be constructed near Massena, New York; (ii) a single circuit 765 kv transmission line between said Massena substation and a 765 kv substation to be constructed in the Town of Marcy, New York and (iii) two 230 kv transmission lines connecting such 765 kv lines with Applicant's St. Lawrence Project, all of which are the subject of an Application for a Certificate of Environmental Compatibility and Public Need, filed September 21, 1973 with the Public Service Commission of the State of New York pursuant to Article VII of the Public Service Law, and which will be considered at length in the public hearings to be conducted by the New York Public Service Commission.<sup>1/</sup> All these facilities are between approximately 72 miles and 180 miles from the nearest portion of any boundary of Greene County. See the map attached hereto as Exhibit A.

7. Petitioner has failed to show that it has any authority under the laws of the State of New York to seek such intervention or to participate in this proceeding. Petitioner alleges that it is a "duly constituted planning board under provision of Section 239b, Article 120B of the County Law of the

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<sup>1/</sup> Copies of application to the New York Commission were sent to the Commission for its information on October 4, 1973.



State of New York". The authority for a County to establish a County Planning Board is contained in Section 220 of the New York County Law and Section 239-b of the New York General Municipal Law.<sup>2/</sup> Nothing contained in those laws authorizes a County Planning Board to prosecute or protect any alleged right of the State or the local government. A County Planning Board is simply that. It can conduct studies and propose plans to the County Board of Supervisors but otherwise it can take no action. The County Board of Supervisors is expressly barred by Section 239-d of the New York General Municipal Law from considering State and Federal projects in connection with plans submitted by its Planning Board. Furthermore, such law expressly limits the powers of a planning board to planning activities "in such county". Moreover, under New York law the authority to represent the County is vested in the County Legislature or the Board of Supervisors. In any administrative or judicial proceeding the County Legislature or the Board of Supervisors is represented by a duly appointed County Attorney.

8. The petition to intervene contains speculative and conclusory allegations with respect to possible or proposed generating facilities and another transmission facility. It seeks consolidation of the issues in the Presidential Permit proceeding, Docket No. E-8414, with the issues

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<sup>2/</sup> A copy of the cited laws is attached as Exhibit B.

in the pending proceeding for Commission approval of the location and design of Applicant's licensed transmission line to be constructed from the switchyard of Applicant's Blenheim-Gilboa Project (No. 2685) to Leeds, New York, and in the pending proceeding for a license for Applicant's proposed Breakabeen Pumped Storage Power Project (No. 2729).

9. There is no physical or logical connection between Applicant's Blenheim-Gilboa Pumped Storage Power Project (No. 2685) and the border crossing for which a Presidential Permit is sought herein. The southern terminus of transmission lines proposed to be built from the border crossing point to the south in New York State is near Utica, 72 miles from the Applicant's Project No. 2685. The switchyard at that project is the western terminus of the Gilboa-Leeds transmission line which has been the subject of four years of administrative proceedings and litigation between the would-be intervenor and Applicant. There are no facilities directly connecting Project No. 2685 and those proposed to be built from the border to the vicinity of Utica. No such facilities are proposed to be constructed by anyone. The location and design of the Gilboa-Leeds transmission line is in no way involved in the proceeding on the application for Presidential Permit.

10. There is no physical or logical connection between Applicant's Breakabeen Pumped Storage Project No. 2729 and the border crossing point which is the subject of this proceeding. The Breakabeen Project is



proposed to be located directly downstream of the existing Blenheim-Gilboa Pumped Storage Power Project.<sup>3/</sup> The Breakabeen Project and its related transmission facilities will not be anymore closely connected with the facilities proposed at the Canadian border than is the Blenheim-Gilboa Project and its transmission facilities.

11. The power which the Applicant is here asking the Federal Power Commission to exercise is the implied power to the President as the "sole organ of the federal government in the field of international relations", United States v. Pink, 315 U.S. 203, 229, quoting United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320, as delegated to the Commission by Executive Order No. 10485, the authority for which is found in 3 U.S.C. Section 301. That Executive Order states:

"WHEREAS the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas;"

The would-be intervenor has not shown that it has and could not possibly have the requisite interest in the exercise of the President's implied power to conduct foreign relations to justify intervention in this proceeding.

12. As evidenced by the attached memorandum from counsel for the would-be intervenor to the Greene County Legislature, the sole

<sup>3/</sup> The would-be intervenor herein is not a party in the Breakabeen licensing proceeding although it has petitioned to intervene.

purpose of the Petition to Intervene in this proceeding is to cause further delay in the construction of the Gilboa-Leeds transmission line of Project No. 2685, a line to be located partly in Greene County between Gilboa and Leeds. As set forth above, the merits of the Gilboa-Leeds line are totally irrelevant to the issues in this Presidential Permit proceeding.

13. For the foregoing reasons; it would be contrary to the public interest to grant the Petition to Intervene.

14. The Petition of Greene County Planning Board to Intervene in Docket No. E-8414 and the several requests made in the petition should be dismissed on the ground that Petitioner lacks authority under New York law to seek intervention or to participate in the proceeding and, in addition, should be denied on the ground that the Petitioner does not have an interest of such a nature that intervention is necessary or appropriate to the administration of the Executive Order under which the Application for Presidential Permit was filed.

Respectfully submitted,

POWER AUTHORITY OF THE  
STATE OF NEW YORK

By \_\_\_\_\_

Scott B. Lilly  
General Counsel

OF COUNSEL:-

John C. Mason, Esquire  
Morgan, Lewis & Bockius  
1140 Connecticut Avenue, N. W.  
Washington, D. C. 20036

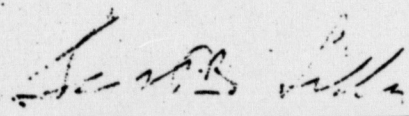


STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK )

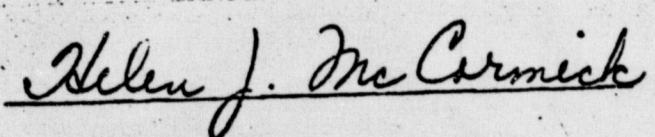
VERIFICATION

Scott B. Lilly, being first duly sworn deposes and says:

That he is General Counsel of Power Authority of the State of New York; that he has read the foregoing Answer to Petition of Greene County Planning Board to Intervene and knows the contents thereof and that the same are true to the best of his knowledge and belief.

  
\_\_\_\_\_  
Scott B. Lilly

Subscribed and sworn to before me, a  
notary public of the State of New York,  
this 14th day of November, 1973.

  
\_\_\_\_\_  
Helen J. McCormick

HELEN J. McCORMICK  
Notary Public, State of New York  
No. 24-2607500  
Qualified in Kings County  
Term Expires March 30, 1975

St. Lawrence Project

Ft. Covington Border Crossing Point

Marcy Substation

Massena Substation

LAKE ONTARIO

LAKE ERIE

# NEW YORK STATE COUNTIES



Published by

STATE OF NEW YORK  
NELSON A. ROCKEFELLER, Governor  
DEPARTMENT OF COMMERCE  
KEITH S. McFUGH, Commissioner





## § 220. County planning board

The board of supervisors is empowered to establish a county planning board pursuant to article twelve-b of the general municipal law and to make the necessary appropriations thereto.

**Historical Note**

Section 220 of the County Law of 1909 is covered by sections 400 and 847.

## § 221. County park commission

The board of supervisors shall have power to create a county park commission to consist of not less than five or more than seven members who shall be residents of the county. The members of such commission shall be appointed by the board of supervisors and hold office during the pleasure of the board or for such terms as the board may determine. Not more than a majority of the members of any such commission shall belong to the same political party. The members of any such commission shall serve without compensation but shall be allowed their necessary expenses incurred in the performance of their duties. Within the amount provided by appropriation and subject to such rules and regulations as the board of supervisors may prescribe, any such county park commission shall have the supervision and management of all county parks within the county. All county parks shall be kept and maintained for the free use of the public, subject to such regulations as the board of supervisors may impose.

**Historical Note**

Section is from County Law of 1909, c. 16, § 12, subd. 50-a, formerly 50, as added by L.1926, c. 676, and renumbered 50-a by L.1939, c. 312, § 4.

Section 221 of the County Law of 1909 is covered by section 403.

**Notes of Decisions**

## 1. Palisades Interstate Park

The Board of Commissioners of Palisades Interstate Park is purely a State board, and could not be said to

be a "county park commission" within meaning of subdivision 50 of section 12 of the County Law of 1909. Op. Atty.Gen., 1932, 45 St.Dept. 58.

## § 222. Cemeteries

1. The board of supervisors may acquire by condemnation, purchase, gift or devise burial plots outside a city or village within the county, for the burial of indigent persons. Such burial plots shall be under the general care and supervision of the county commissioner of public welfare.

2. The board of supervisors may, by the affirmative vote of two-thirds of the total membership of the board, acquire by condemna-

Sec.

- 239-g. County official map, declaration of legislative policy and intent.
- 239-h. County official map, establishment.
- 239-i. County official map, changes.
- 239-j. Permits for buildings in bed of mapped county roads and drainage rights-of-way.
- 239-k. Regulations for control of development.
- 239-l. Coordination of municipal zoning; legislative policy and intent.
- 239-m. Notice of certain proposed municipal zoning actions to be submitted to county, metropolitan or regional planning agency; report thereon; final action.

**Historical Note**

Article added by L.1925, c. 539, eff.  
April 9, 1925.

Article heading amended by L.1955,  
c. 009, eff. April 14, 1956, which in-  
serted "Metropolitan".

### § 239-b. Establishment of metropolitan, regional or county planning boards

The board of supervisors of any county alone or in collaboration with the governing bodies of the cities, towns and villages in such county or any of them or in collaboration with the board or boards of supervisors of any adjacent county or counties may establish a regional or county planning board to consist of representatives of such county or counties and where the local governments of the municipalities participate in the formation of such regional or county planning board, such board may also contain representatives of such municipalities to be selected in a manner to be determined by the board or boards of supervisors. The county engineer or superintendent of highways or district superintendent in each county participating shall be a member ex-officio of any such regional or county planning board, and in a county which has established the office of comptroller, or commissioner of finance, such official shall also be a member ex-officio of such regional or county planning board. Said board of supervisors may also designate the chief engineers of any special county improvement commissions or bodies to serve as members ex-officio of such regional or county planning board. The members of such regional or county board shall receive no salary or compensation for their services as members of such board. The governing bodies of cities, towns and villages in any county or counties may collaborate in establishing a regional or metropolitan planning board to consist of representatives of the constit-



## § 239-b

## GENERAL MUNICIPAL LAW

## Art. 12-B

uent municipalities to be selected in a manner to be determined by agreement among the participating municipalities. Added L.1925, c. 539; amended L.1932, c. 137; L.1956, c. 609, eff. April 14, 1956.

### Notes of Decisions

Architectural services 2  
Eligibility for membership 1

#### Library references

Counties 7.  
C.J.S. Counties § 14.

#### 1. Eligibility for membership

The appointment by the board of supervisors of Suffolk county of three of its members to constitute a regional planning board did not make them independent public officers, whose functions as such were incompatible with the exercise of their functions as supervisors. *Macrum v. Hawkins*, 1933, 261 N.Y. 193, 184 N.E. 817, reargument denied 261 N.Y. 691, 185 N.E. 795.

This section expressly authorizes the appointment of supervisors as members of a county planning board. *Macrum v. Suffolk County*, 1931, 141

Misc. 358, 252 N.Y.S. 546, affirmed 235 App.Div. 370, 257 N.Y.S. 287, reversed on other grounds 261 N.Y. 193, 184 N.E. 817, reargument denied 261 N.Y. 691, 185 N.E. 795.

A representative appointed by a municipality to serve on a regional or metropolitan planning board is a public officer and is required to reside within the municipality he represents. 18 Op.State Compt. 327, 1962.

Representatives of the county on a county planning board established pursuant to this article need not be members of the board of supervisors. 11 State Compt. 20, 1955.

#### 2. Architectural services

A member of a county planning board may not legally enter into a contract with the county for the rendition of architectural services. 8 Op.State Compt. 191, 1952.

## § 239-c. Expenses

The board of supervisors of a county, the town board of a town, the common council of a city, and the board of trustees of a village, or the governing bodies of the participating municipalities comprising membership in a regional or metropolitan planning agency are hereby authorized independently or in collaboration with other local governments, in their discretion, to appropriate and raise by taxation money for the expenses of such metropolitan, regional or county planning board; and such municipal corporations shall not be chargeable with any expense incurred by such planning board except pursuant to such an appropriation. Added L.1925, c. 539; amended L.1932, c. 137; L. 1956, c. 609, eff. April 14, 1956.

### Notes of Decisions

#### 1. Custody of moneys

Participants of regional or metropolitan planning board should enter into agreement providing for custody

of moneys made available to the board and submission and auditing of claims. 18 Op.State Compt. 327, 1962.

## § 239-d. Powers of board; authority to receive funds

1. Said planning board is hereby empowered to perform planning work, including but not limited to surveys, land use studies, urban renewal plans and technical services, and shall study the needs and conditions of metropolitan, regional, county and community planning in such county or counties or the area covered by constituent municipalities and prepare and adopt in whole or in part and, whenever and as often as such board may deem it for the public interest, to change or add to, a comprehensive master plan for the development of the entire area of the county or counties or municipalities participating, which master plan shall include the highways, parks, parkways and sites for public buildings or works including sub-surface facilities, in the acquisition, financing or construction of which the county or the constituent municipalities has participated or may be called upon to participate, acquire, finance or construct.

2. The board of supervisors in any county is hereby empowered to adopt and establish and whenever and as often as such board may deem it for the public interest, to change or add to a county plan showing the highways, parks, parkways and sites for public buildings or works, including sub-surface facilities, other than state or federal projects, in the acquisition, financing or construction of which the county has participated or may be called upon to participate. Before acting thereon in the first instance and before adopting any amendments thereto, such board of supervisors shall give two weeks' notice thereof and hold a public hearing or hearings thereon at which representatives of the regional or county planning board, the state superintendent of public works or his representative, the county departments, municipalities, property owners and others interested therein shall be heard. When so approved in whole or in part by the board of supervisors in any county or counties such approved county plan or part thereof shall be deemed to be binding upon the board of supervisors of the county and the several county departments thereof, and no expenditure of public funds by such county for the acquisition of land except for state or federal projects or for any public improvements shown on such county plan shall be made except in accordance with such county plan, and no expenditure of public funds by the county shall be made for any other public improvements other than state or federal projects not shown on such county plan or on the acquisition of land therefor, which would necessitate the modification of such county plan, until such county plan has been amended as here-



After provided. Before holding any such public hearing with respect to a proposed change in or addition to the county plan such board of supervisors shall submit such proposed change or addition to the regional or county planning board for its consideration and advice and shall fix a reasonable time in which such regional or county planning board may report thereon. Upon receipt of such advisory report from the county or regional planning board or upon the failure of such board to report within the time limit so fixed such board of supervisors after public hearing thereon as hereinbefore provided may thereupon act upon the proposed change, but any action adverse to the report of the county or regional planning board shall require affirmative vote of a majority of all the members of such board of supervisors. Before the final approval of any plan involving the construction or reconstruction of any state or county highway, either with or without federal aid, the county or regional planning board shall be given an opportunity to examine such plans and offer suggestions with respect thereto. This section shall in no wise be construed as nullifying or contravening in any manner the provisions of section three hundred and twenty-b of the highway law with respect to the final approval of the state superintendent of highways.

3. Such county or regional planning board shall also through its own staff or such agencies as it may designate, collect and distribute information relative to metropolitan, regional and community planning and zoning in such county or counties, or the area of the participating municipalities and the exercise of such powers is hereby declared to be for a public purpose and all moneys expended for such purposes are declared to be for municipal use.

4. Such planning board may conduct researches into business and industrial conditions in the county and the municipal subdivisions thereof and may seek to cooperate with official and unofficial bodies organized for such purposes.

5. Such planning board may recommend to the governing bodies of the several cities, villages and towns whose jurisdictions are served by the regional or county planning board a comprehensive zoning plan which shall designate suitable areas to be zoned for residential, commercial and industrial uses, taking into consideration, but not limited to, such factors as existing and projected highways, parks, parkways, public works, public utilities, public transportation facilities, population trends, topography and geologic structure.

6. Every such metropolitan, county or regional planning board shall make a report to the board of supervisors or the governing bodies of the constituent municipalities on or before January first of each year.

7. Any such county or regional planning board may designate one or more areas of the county or region, outside the limits of any incorporated village or city or any area beyond such limits over which a city exercises powers of plat approval, as a county or regional subdivision control area or areas. In order to exercise the power authorized by this paragraph, such planning board shall adopt regulations for the subdivision of lands within such areas, which regulations shall be in accord with the requirements set forth in section two hundred seventy-seven of the town law. Upon approval by the board of supervisors of a county, such regulations shall become effective and shall be enforced within the subdivision control area of such county; provided, however, that such regulations shall not apply, except pursuant to a resolution of the town board consenting thereto, in any town where there is a town planning board in existence or which is subsequently created pursuant to the provisions of section two hundred seventy-one of the town law, with given power to approve subdivision plats pursuant to the provisions of section two hundred seventy-six of the town law, and which has adopted subdivision regulations approved by the town board. A certified copy of such consenting resolution shall be filed in the office of the county clerk and a copy thereof transmitted to the board of supervisors and to the county or regional planning board. For the purposes of this section, the term "subdivision" shall mean the division of any parcel of land into two or more lots, blocks or sites, with or without streets or highways. Upon the approval by the board of supervisors of the subdivision regulations submitted by the county or regional planning board, which approval shall include the approval of a majority of the town supervisors voting thereon, the clerk of such board of supervisors shall forthwith file a certified copy of the resolution approving such regulations in the office of the clerk of the county. Thereafter no subdivision map of any land which is subject to such control and regulations shall be filed or recorded in the office of the county clerk unless it shall have been approved by said county or regional planning board. The county or regional planning board shall act in relation to such subdivision maps in the same manner and in conformity with the provisions imposed upon a town planning board pursuant to the provisions of sections two hundred seventy-six, two hundred seventy-seven, and two hundred



seventy-eight of the town law, provided that public hearings shall be held within the town in which the proposed subdivision is located. The common council of any city or the board of trustees of any village or town wholly or partially situated within any county or region for which a county or regional planning board has been established, may assign to such planning board the authority herein set forth in relation to subdivisions within or adjacent to such city, village or town, in the same manner and with the same force and effect as though such authority has been assigned to a duly established city, village or town planning agency. After acceptance in writing such county or regional planning board shall exercise the authority so vested in it and shall continue to do so until terminated by the local governing body or in writing by the county or regional planning board. The approval of a subdivision map by the county or regional planning board shall not be deemed to be the acceptance by any town, city or village of a dedication of or responsibility for any street, highway, park, area, facility or program shown on such map.

8. The planning board of any county with the approval of the board of supervisors is hereby authorized and empowered to furnish to communities within the county, its services when such services are requested by the municipality. The board of supervisors shall establish the charges to be made for the services furnished under the provisions of this subdivision.

9. In furtherance of the purposes of this article, such county, metropolitan or regional planning board may receive and expend grants from private foundations or agencies and may apply for and accept grants from the federal government or the state government and enter into contracts for and agree to accept such grants, donations or subsidies in accordance with such reasonable conditions and requirements as may be imposed thereon. Added L.1925, c. 539; amended L.1927, c. 314; L.1932, c. 137; L.1956, cc. 609, 611; L.1957, c. 1021; L.1958, c. 628; L.1960, c. 55; L. 1963, c. 708, § 2, eff. Sept. 1, 1963.

**Historical Note**

Subd. 4 added by L.1950, c. 611, eff. April 14, 1950. Former subd. 4 renumbered 0.

Subd. 5 added by L.1950, c. 611, eff. April 14, 1950. Another subd. 5 was renumbered 0.

Subd. 6, formerly 4, as amended by L.1950, c. 609, eff. April 14, 1950, was renumbered 6 by L.1950, c. 611, eff. April 14, 1950.

Subd. 7 added by L.1957, c. 1021; amended by L.1963, c. 708, § 2, eff. Sept. 1, 1963, which in sentence beginning "For the purposes", substituted "blocks or sites, with or without streets or highways" for "or plots in such a way as to create one or more new streets."

Subd. 8 added by L.1958, c. 628, eff. July 1, 1958.

## GENERAL MUNICIPAL LAW § 239-d

of art to said municipality, without reference of the matter, by reason of its proposed location or otherwise, to said planning commission. Nor shall this section be construed as intended to limit or impair any other power of any such art commission or affect the same, except in so far as it provides for reference or report, or both, on any matter before final action thereon by said art commission.

As amended L.1972, c. 892, § 25.

1972 Amendment. L.1972, c. 802, § 25, eff. Sept. 1, 1973, inserted references to local laws following refer-

ences to ordinances wherever appearing therein.

### ARTICLE 12-B—METROPOLITAN, REGIONAL OR COUNTY PLANNING BOARDS

Sec.

239-n. Notice of certain subdivision plats to be submitted to county planning agency; report thereon; final action [New].

#### § 239-b. Establishment of metropolitan, regional or county planning boards

##### Law Review Commentaries

The structure of land use planning: A reappraisal and a program. 21 Syracuse L.Rev. 375 (1969).

##### Supplementary Index to Notes Compatibility of offices 3

##### 1. Eligibility for membership

Village representatives on regional planning board are not "public officers" under Public Officers Law, § 3, requiring public officers to be residents and accordingly need not be residents of village for which they are chosen. *Lowell v. Browner*, 1965, 47 Misc.2d 720, 263 N.Y.S.2d 93.

There is no constitutional or statutory bar prohibiting the holding by the same person of the two offices of city supervisor and member of the Newburgh city planning board but the duties thereof may be incompatible. 1965, Op.Atty.Gen. (Inf.) Jan. 5.

The fact that the chairman of a regional planning board is ineligible to hold such office by reason of nonresidence in the municipality which he represents, does not jeopardize a member town or relieve it of its contractual obligations to such board,

since the de facto chairman's official acts are valid, as are those of the board, during his de facto tenure in office. 20 Op.State Compt. 541, 1964.

The chairman or other member of a regional planning board is a public officer and must reside in the village which he represents on such board. 20 Op.State Compt. 430, 1964.

##### 3. Compatibility of offices

Neither constitutional or statutory bar nor incompatibility of duties prevents one person from simultaneously holding the two positions of member or chairman of both a county and a town planning board. Op.Atty.Gen. (Inf.) 379-1968.

A village board of trustees may not legally appoint any of its number to membership on a regional planning board. Op.State Compt. 68-172.

There is no incompatibility where a member of a local planning board or zoning board of appeals is also a member of a county planning board because the latter is not an incumbent of a public office, but because of the apparent basic repugnance in one individual serving both the county and a local government with respect to zoning and planning matters, such an arrangement is disapproved. Op. State Compt. 67-723.

#### § 239-d. Powers of board; authority to receive funds

[See main volume for text of 1]

2. The board of supervisors in any county is hereby empowered to adopt and establish and whenever and as often as such board may deem it for the public interest, to change or add to a county plan showing the highways, parks, parkways and sites for public buildings or works,



## § 239-d GENERAL MUNICIPAL LAW

including sub-surface facilities, other than state or federal projects, in the acquisition, financing or construction of which the county has participated or may be called upon to participate. Before acting thereon in the first instance and before adopting any amendments thereto, such board of supervisors shall give two weeks' notice thereof and hold a public hearing or hearings thereon at which representatives of the regional or county planning board, the state commissioner of transportation or his representative, the county departments, municipalities, property owners and others interested therein shall be heard. When so approved in whole or in part by the board of supervisors in any county or counties such approved county plan or part thereof shall be deemed to be binding upon the board of supervisors of the county and the several county departments thereof, and no expenditure of public funds by such county for the acquisition of land except for state or federal projects or for any public improvements shown on such county plan shall be made except in accordance with such county plan, and no expenditure of public funds by the county shall be made for any other public improvements other than state or federal projects not shown on such county plan or on the acquisition of land therefor, which would necessitate the modification of such county plan, until such county plan has been amended as hereinafter provided. Before holding any such public hearing with respect to a proposed change in or addition to the county plan such board of supervisors shall submit such proposed change or addition to the regional or county planning board for its consideration and advice and shall fix a reasonable time in which such regional or county planning board may report thereon. Upon receipt of such advisory report from the county or regional planning board or upon the failure of such board to report within the time limit so fixed such board of supervisors after public hearing thereon as hereinbefore provided may thereupon act upon the proposed change, but any action adverse to the report of the county or regional planning board shall require affirmative vote of a majority of all the members of such board of supervisors. Before the final approval of any plan involving the construction or reconstruction of any state or county highway, either with or without federal aid, the county or regional planning board shall be given an opportunity to examine such plans and offer suggestions with respect thereto. This section shall in no wise be construed as nullifying or contravening in any manner the provisions of section three hundred and twenty-b of the highway law with respect to the final approval of the state superintendent of highways.

[See main volume for text of 3 to 9]

As amended L.1968, c. 420, § 127, eff. May 31, 1968.

Subd. 2 amended L.1968, c. 420, § 127, eff. May 31, 1968. L.1968 substituted "commissioner of transportation" for "superintendent of public works" in sentence beginning "Before acting thereon."

### 3. Ineligibility of board member

Any official acts performed by the chairman of this regional planning board are valid, notwithstanding his ineligibility to hold such office. 20 Op.State Compt. 430, 1964.

## § 239-g. County official map, declaration of legislative policy and intent

It is the general purpose of sections two hundred thirty-nine-g to two hundred thirty-nine-k inclusive to enable counties to utilize certain regulatory powers which are essential for the purpose of providing for orderly growth and development, for affording adequate facilities for the safe, convenient, and efficient means for the traffic circulation of its population and the vehicular movement of goods, for safeguarding the public against flood damage, and for providing needed space for public development. Such purposes are declared to be in promotion of the safety, convenience, and general welfare of the community.

KAFIR AND NEEDLEMAN  
6 PINE STREET  
GLEN FALLS, NEW YORK 12031  
(518) 793-6331

April 25, 1972

The following is a brief discussion of the approximate direct financial benefits which have and will accrue to private land owners, the County of Greene and the Towns of Durham, Greenville, Cairo and Athens from continued opposition to plans of the Power Authority of the State of New York to construct a series of transmission lines from the northwest corner of the County to Leeds across a 30 mile long, 400 foot wide corridor. The numbers used in this discussion are very rough and in most cases are intended to understate rather than overstate the actual impacts.

PASNY'S ORIGINAL PROPOSAL

Had the County not objected, in April 1970 PASNY would have condemned approximately 1,500 acres in Greene County. Landowners would have been paid 90% of the market value of this land as determined by PASNY's appraisers and 90% of the assessed value of this land would have been forever removed from the tax rolls. In addition, these 1,500 acres would have become forever unavailable to any kind of other economic development. This is particularly significant since about 36,000 feet of direct road frontage would have been involved.

SAVINGS TO DATE

By delaying PASNY's plans for two years (so far), from April 1970 to today, and as a result of conducting a vigorous opposition, the following savings have accrued to Greene County and its people:

1. Appreciation in land values. Even if land has increased in value a mere \$10 per acre per year, the owners of the 1,500 acres to be taken have gained \$30,000 in land value in the last two years.



2. Real Estate Taxes. Assuming an average assessed valuation of \$150 (after equalization)<sup>1</sup> per acre for the 1,500 acres and a total tax rate of \$27.00 per \$1,000<sup>2</sup>, the County, towns and school and other districts have gotten \$15,000 in real estate taxes from the 1,500 acres which would have been lost had the land been taken by PASNY in April 1970.

3. Reduction in land to be taken. Based on the Federal hearings to date, it now appears that PASNY's land acquisition will be limited to about 750 acres rather than the 1,500 acres originally wanted. This means that an extra 750 acres will remain in private hands and on the tax rolls where the appreciation in land value will accrue to private benefit and be available for real estate tax purposes. These 750 acres have a rough market value today of \$225,000, are assessed at \$75,000 and produce \$3,750 per year of real estate taxes. It can also be expected that if such land continues to increase at a mere \$10 per acre per year that over the next 40 years (the expected useful life of the power line) the preservation of this land in private hands will create \$300,000 of land value appreciation to private land owners and at least \$150,000 of real estate taxes to the County, towns and school districts. It also can be assumed that tens of thousands of dollars of buildings and other improvements may be developed on these 750 acres resulting in construction jobs, increased assessable property, added mortgage taxes and additional sales tax revenues from new seasonal and permanent residents.

4. Sales Tax Revenues. Because the transmission line has not yet been constructed, the County has not yet suffered a decline in tourism which may result if scenic values are impaired. Tourists bring significant amounts of income to the County and tourist spending amounts for about 23% of County sales tax revenues<sup>3</sup>. If the County would have lost a tiny 1% of its tourists in the past two years from the visual blight of power lines, local

<sup>1</sup>In 1969 total assessed valuation of the 32,000 acres which make up Durham was \$6,373,664 or approximately \$200/acre. Land in Greenville, Cairo and Athens was assessed even higher.

<sup>2</sup>In 1969 in Durham the County rate was \$7.98/\$1,000, the school rate was \$27.51/\$1,000, the town rate was \$16.42/\$1,000 and special districts of about \$2/\$1,000.

<sup>3</sup>In 1967, for example, County bars and restaurants grossed \$4,911,000 and hotels and motels, \$10,209,000.



businesses would have had approximately \$300,000 less in business and the County approximately \$9,000 less in sales tax revenues.

5. Summary of Savings to Date.

Appreciation in Land Values .....	\$ 30,000
Preserved Real Estate Taxes for Two Years .....	7,500
Value of 750 Acres Not to be Taken .....	225,000
40 Years Appreciation on 750 Acres .....	300,000
40 Years Real Estate Taxes on 750 Acres .....	150,000
Sales Tax Revenues Retained .....	9,000
Tourist Income Retained .....	<u>300,000</u>

Total Savings (not including potential for development on the 750 acres saved to date) .....\$1,021,500

6. Cost of Savings to date. The County has paid \$5,000 to Kafin and Needleman and the Towns of Durham and Greenville have each paid \$500. Some telephone, xerox and postage disbursements have also been borne by the County.

SAVINGS IF FIGHT CONTINUES AND IS WON

Obviously, if the fight is won, the remaining 750 acres worth approximately \$225,000 will be saved from condemnation. Over forty years this land will appreciate at least \$300,000 and net real estate taxes of at least \$150,000. If half of it is developed into three acre lots with improvements averaging \$10,000 per lot, \$1,250,000 of value would be added to the County's real estate tax rolls and the spending power of 125 families to the County's income. In addition it would be expected that land adjacent to the proposed right of way, which might be lost to development if the power line were built, would also increase in value and development if no line were built.

SAVINGS IF FIGHT CONTINUES BUT IS LOST

A vigorous fight against the power line can delay land condemnation and construction at least another two years. The result of this will be to extend for another two years the savings realized between April 1970 and April 1972 or \$30,000 in land appreciation, \$7,500 in real estate taxes, \$9,000 in sales taxes and \$300,000 in tourist revenues.



Perhaps even more important, even if the power line is eventually built, a continued fight may be expected to bring a revised plan including certain very important concessions as to routing and design. It can reasonably be expected that PASNY will be ordered (a) to hire and pay for on behalf of the County and its towns, a landscape architect and forester for two years at total estimated salaries of \$30,000 year, (b) to provide right of way improvements including parks of a value of at least \$160,000 and (c) to reroute the line to avoid areas particularly important for high quality residential development and tourism. The amount of money to be saved from this last point is hard to calculate, but even if room for one \$50,000 permanent home and three \$20,000 vacation homes is saved, the increase in real estate and sales tax income should be significant.

Summary of Savings Over Next Two Years

Appreciation in Land Values.....	\$ 30,000
Preserved Real Estate Taxes.....	7,500
Sales Tax Revenue Retained.....	9,000
Added Employment.....	60,000
PASNY contributions to recreation.....	160,000
Tourist Income Retained.....	<u>300,000</u>

Total Savings (not including potential development on areas saved by rerouted transmission line) ..... \$566,500

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UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

DEC 11 9 29 AM '73

Power Authority of the State of New York

Docket-No. E-8414

COMMISSION

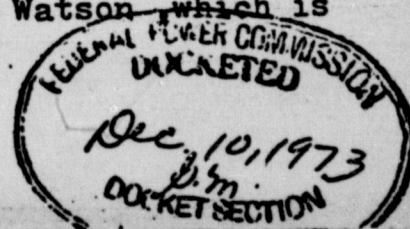
PETITION TO INTERVENE

1. Petitioner ,Peter J.O'Reilly, resides at Farney Road ,Beaver Falls in the County of Lewis, State of New York and owns real property in the Town of Watson ,Lewis County, State of New York .

2. Petitioner opposes the application herein for a Presidential Permit because the facilities to be constructed thereunder will have a economically adverse effect upon petitioner's property value and will impinge as well upon the esthetics of the surrounding countryside .

3. Petitioner additionally opposes the application because the State of New York Legislature has failed to provide adequate legislative safeguards to its citizens in the matter of Article VII of the Public Service Law which pertains to applications made thereunder for Certificates of Environmental Compatibility and Need .This statute permits alternate routes which may traverse municipalities not presently affected, in the proposed primary and alternate routes already given public notice ,without further public notice . In other words, the aforesaid Article 7 of the Public Service Law is an artifice designed to give the citizens of this state the false impression that they are protected in their property and other rights when in reality ,PASNY and the PSC (Public Service Commission ) have the statutory right under Article 7 of the PSL to completely re-route the proposed transmission facilities without giving any additional public notice .Petitioner believes his and other citizens' rights are thereby and have been denied by the hereinabove mentioned statutory privilege granted to the Public Service Commission of the State of New York .

4. Petitioner further opposes the application of PASNY because it has failed to cause to have published a legible map whereby any reasonable citizen of Lewis County might be able to adequately detect the passage of the proposed transmission lines through said county. In this regard, property owners have been particularly slighted in the Town of Watson ,which is not identified whatever ( see attached map ) .





5. Lewis County has been designated a poverty area by Federal agencies, whose greatest economic potential-recreation-has been barely tapped. The 200 plus foot towers which will carry the proposed 765 KV power lines will inflict untold economic damage in the most scenic part of this county for a hundred years to come thereby affecting its recreational potential.

6. Petitioner is totally unconvinced that PASNY has tried its best, using the latest technological developments, to prevent the despoilation of half of a state which these transmission towers and lines will eventually cover.

7. Petitioner hereby requests (a) leave to intervene, (b) a public hearing on the application (c) an environmental statement re the impact of the construction of the proposed facilities and the entire 765 KV network of which the facilities in the application will be a part (d) the right to be present at all conferences between the applicant and representatives of the Commission.

Respectfully submitted,

Peter J. O'Reilly  
Farney Road  
Beaver Falls, New York 13305  
(315) 346-6963

STATE OF NEW YORK )  
COUNTY OF LEWIS ) SS:

The undersigned, Peter J. O'Reilly, being duly sworn deposes and says, that he is familiar with the contents of the foregoing petition and that, to the best of his knowledge and belief, the facts set forth therein are true.

*Peter J. O'Reilly*  
PETER J. O'REILLY

I hereby certify that I have this day served the attached document upon the applicant.

Dated: December 6, 1973

MARY R. PETRIE  
Notary Public in the State of New York  
NO. 25-307705C  
QUALIFIED IN LEWIS COUNTY  
Term Expires March 30, 1975

Sworn to before me this  
5th Day of December, 1973

*Mary R. Petrie*  
Notary Public

~~1. (DOCKET) ORIGINAL~~  
2. CENTRAL FILES

THIS DOCUMENT IS NOT FILED  
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IS ACCURATELY RECORDED  
CORRESPONDENTLY.

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Power Authority of the )  
State of New York )

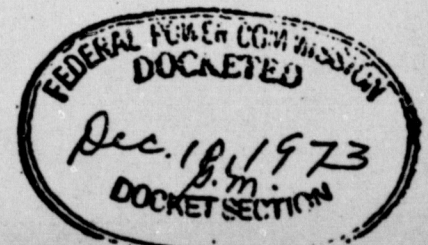
Docket No. E-8414

PETITION FOR LEAVE TO INTERVENE

Petition For Leave To Intervene of Association  
for the Preservation of Durham Valley.

1. The above-named Petitioner respectfully  
applies for leave to intervene and become a party to the  
above-entitled proceeding.

2. Petitioner, Association for the Preserva-  
tion of Durham Valley (hereinafter "the Association"),  
P. O. Box 15, Durham, New York, is a voluntary, unincor-  
porated, non-profit association organized in 1969. The  
Association's primary purpose is to protect and preserve  
the scenic, historical and ecological values of the Durham  
Valley area and to take appropriate action to ensure  
such protection and preservation. At the present time,  
the Association has over 100 members who own in the aggre-  
gate over 5,000 acres of land in Durham Valley and its  
immediate vicinity.





3. The Association opposes the application herein for a Presidential Permit because the facilities to be constructed thereunder are part of a comprehensive integrated plan including Project Nos. 2685 and 2729 and additional generating and transmission facilities which will have a materially adverse impact on the Durham Valley area.

4. The Association also opposes this application on the ground that the proposals do not accord with any sensible notion of comprehensive planning, in that a piecemeal approach is employed therefore depriving concerned parties of the opportunity for an overall evaluation.

5. The Association also opposes this project on the ground that it is being considered separate and apart from planned facilities for base load generation in the Athens area of Greene County, as well as the present proceedings concerning Project No. 2685, in which the Association is a party Intervenor, and Project No. 2729 in which the Association has intervened.

6. Petitioner hereby requests (a) leave to intervene, (b) a public hearing on the application, (c) an environmental impact statement covering the proposed facilities and the entire 765kv network, and related generation, of which the facilities described

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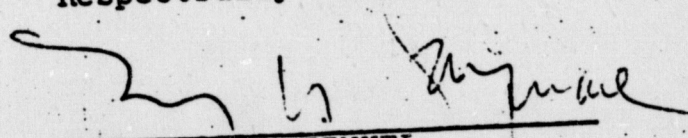
in the application will be a part, (d) consolidation of the issues in Docket No. E-8414 with Projects Nos. 2685 and 2729 and (e) the right to be present at any and all conferences between the applicant and any representatives of the Commission or Commission Staff.

7. Communications concerning this petition and anything relating to Locket No. E-8414 should be sent to Petitioner's Attorney:

Barry H. Garfinkel, Esq.  
919 Third Avenue  
New York, New York 10022.

Dated: New York, New York  
December 6, 1973

Respectfully submitted,

  
BARRY H. GARFINKEL  
Attorney for Petitioner  
919 Third Avenue  
New York, New York 10022  
(212) 371-6000

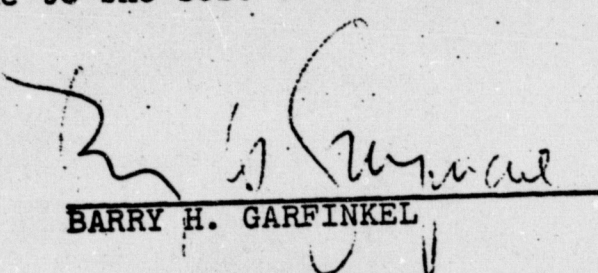


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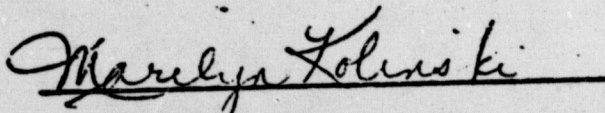
Dec 10 11 02 AM '73  
FEDERAL BUREAU OF INVESTIGATION

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

BARRY H. GARFINKEL, being duly sworn, deposes and says that he is a member of the Bar of the State of New York and is attorney for the Petitioner herein; that he is authorized on behalf of said Petitioner to make this verification; that he has read the foregoing Petition For Leave To Intervene and is familiar with the contents thereof, and that all averments of fact therein contained are true to the best of his knowledge, information and belief.

  
BARRY H. GARFINKEL

Subscribed and sworn to  
before me this 6th day of  
December, 1973.




MARILYN KOLINSKI  
Notary Public, State of New York  
No. 41-7331250  
Qualified in Queens County  
Commission Expires March 30, 1974

000080

CERTIFICATE OF SERVICE

DEC 13 11 02 AM '73

I hereby certify that a true copy of the foregoing Petition For Leave To Intervene was, this 6th day of December, 1973 served upon General Manager, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019 by mail.

  
BARRY H. GARFINKEL

Dated December 6, 1973



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**ORIGINAL**

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Power Authority of the  
State of New York

)  
)  
Docket No. E-8414

APPLICANT'S ANSWER TO PETITION OF  
PETER J. O'REILLY  
FOR LEAVE TO INTERVENE

POWER AUTHORITY OF THE STATE OF NEW YORK

December, 1973

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Power Authority of the  
State of New York

)  
)

Docket No. E-8414

APPLICANT'S ANSWER TO PETITION OF  
PETER J. O'REILLY  
FOR LEAVE TO INTERVENE

1. Power Authority of the State of New York (Applicant) on September 21, 1973 filed an application with the Commission pursuant to Executive Order No. 10485 of September 3, 1953 for a Presidential Permit to construct, operate, maintain and connect electric transmission facilities at the international boundary between Canada and the United States at a point in the Town of Ft. Covington, Franklin County, New York. Public notice of the application was given by the Commission on October 16, 1973.

2. The facilities for which the Presidential Permit is sought consist of one single circuit steel lattice type tower about 500 feet from the border, the wires from that tower to the border constituting a 765 kv circuit which will be connected to a similar circuit at the border



by a similar tower in Canada to be constructed by the Quebec Hydro-Electric Commission about 500 feet from the border, and the required land rights within the United States (See Exhibit IV to Application for Presidential Permit).

3. On December 10, 1973 Applicant received by mail a "petition to intervene" by Peter J. O'Reilly of Beaver Falls, New York (Petitioner). In his petition Mr. O'Reilly requests not only "(a) leave to intervene" but also:

"(b) a public hearing on the application  
(c) an environmental statement to the impact of the construction of the proposed facilities and the entire 765 KV network of which the facilities in the application will be a part (d) the right to be present at all conferences between the applicant and representatives of the Commission."

4. Applicant opposes the petition to intervene on the grounds that Petitioner has not on the face of his petition demonstrated or even claimed any interest whatsoever in the facilities which are the subject of the Presidential Permit application and does not have an interest of such a nature that intervention is appropriate or necessary to the administration of the Executive Order under which the application is made. He has not shown that his participation may be in the public interest.

5. Beaver Falls where Petitioner says he resides and the Town of Watson where Petitioner apparently owns property are located approximately 90 miles from the border crossing point here involved.

6. Petitioner has not claimed any interest in any matter over which the Commission has jurisdiction in this proceeding. The allegation in paragraph 2 of the petition that the facilities to be constructed pursuant to the Presidential Permit will have an economically adverse effect on Petitioner's property value and will impinge upon the aesthetics of the surrounding countryside is erroneous. The one tower and the 500 feet of wire to be constructed approximately 90 miles from the property owned by the Petitioner cannot possibly have any effect on Petitioner's property or the countryside surrounding his property. The transmission line to be constructed through Lewis County by the Applicant herein is not subject to the jurisdiction of the Federal Power Commission in this proceeding but rather is subject to the jurisdiction of the Public Service Commission of the State of New York. On September 21, 1973 Applicant herein filed an application with the Public Service Commission of the State of New York for a Certificate of



Environmental Compatibility and Public Need for the transmission line which will be constructed from the border crossing point (which is the subject of this application) in part through Lewis County to the interconnected New York State transmission network. Petitioner's concern should be addressed to the New York Public Service Commission and not to the Federal Power Commission.

7. The allegation in paragraph 3 of the petition relates to matters of State law over which the Federal Power Commission in this proceeding has no jurisdiction or control.

8. The allegations in paragraphs 4, 5 and 6 by the Petitioner relate to matters within the jurisdiction of the New York Public Service Commission and not to matters over which the Federal Power Commission has any jurisdiction in this proceeding.

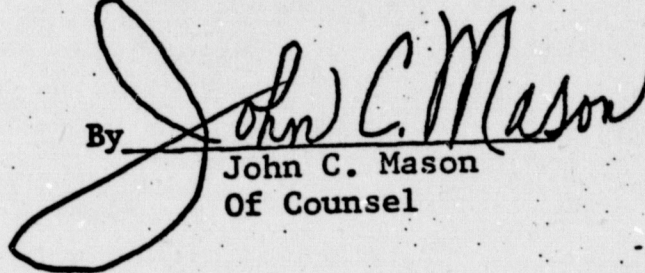
9. Since the Petitioner has not claimed and has not demonstrated any interest within the jurisdiction of the Federal Power Commission in the facilities which are the subject of Applicant's application for a Presidential Permit herein it would be contrary to the public interest to grant the petition to intervene.

WHEREFORE, the petition of Peter J. O'Reilly of Beaver Falls, New York to intervene in Docket E-8414 and several requests made in the petition should be denied on the ground that Petitioner does not have an interest of such a nature that intervention is necessary or appropriate to the administration of the Executive Order under which the application for a Presidential Permit was filed.

Respectfully submitted,

SCOTT B. LILLY  
General Counsel  
POWER AUTHORITY OF THE  
STATE OF NEW YORK

By

  
John C. Mason  
Of Counsel

OF COUNSEL:

Morgan, Lewis & Bockius  
1140 Connecticut Avenue, N. W.  
Washington, D. C. 20036

December 21, 1973

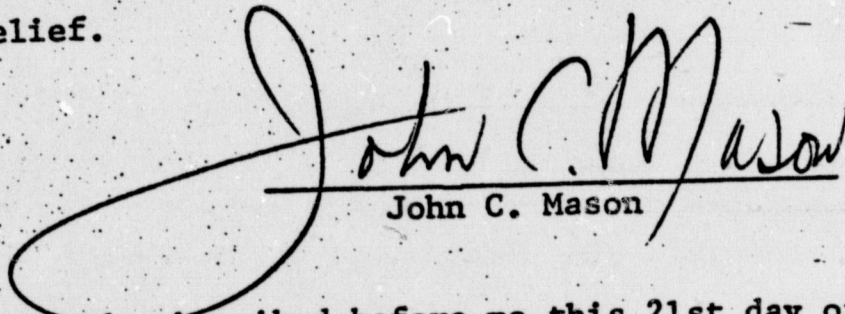


DISTRICT OF COLUMBIA ) SS:

V E R I F I C A T I O N

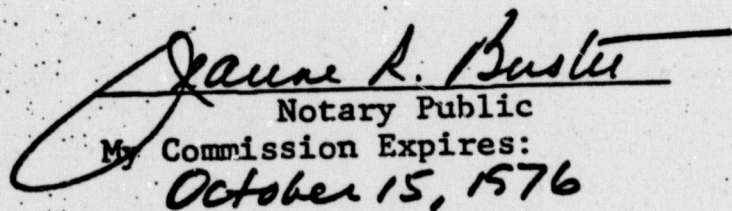
John C. Mason, being first duly sworn deposes and says:

That he is Of Counsel for Power Authority of the State of New York; that he has read the foregoing Answer to Petition For Leave to Intervene and knows the contents thereof and that the same are true to the best of his knowledge and belief.

  
John C. Mason

Sworn to and subscribed before me this 21st day of December, 1973.

[SEAL]

  
Notary Public  
My Commission Expires:  
October 15, 1976

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Power Authority of the  
State of New York

)  
)

Docket No. E-8414

APPLICANT'S ANSWER TO PETITION OF  
ASSOCIATION FOR THE PRESERVATION OF  
DURHAM VALLEY FOR LEAVE TO INTERVENE

POWER AUTHORITY OF THE STATE OF NEW YORK

December, 1973



UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL POWER COMMISSION

Power Authority of the  
State of New York

)  
)

Docket No. E-8414

APPLICANT'S ANSWER TO PETITION OF  
ASSOCIATION FOR THE PRESERVATION OF  
DURHAM VALLEY FOR LEAVE TO INTERVENE

1. Power Authority of the State of New York (Applicant) on September 21, 1973 filed an application with the Commission pursuant to Executive Order No. 10485 of September 3, 1953 for a Presidential Permit to construct, operate, maintain and connect electric transmission facilities at the international boundary between Canada and the United States at a point in the Town of Ft. Covington, Franklin County, New York. Public notice of the application was given by the Commission on October 16, 1973.

2. The facilities for which the Presidential Permit is sought consist of one single circuit steel lattice type tower about 500 feet from the border, the wires from that tower to the border constituting a 765 kv

circuit which will be connected to a similar circuit at the border supported by a similar tower in Canada to be constructed by the Quebec Hydro-Electric Commission about 500 feet from the border, and the required land rights within the United States (See Exhibit IV to Application for Presidential Permit).

3. On December 10, 1973 Applicant received by mail a "Petition for Leave to Intervene" of the Association for the Preservation of Durham Valley (Petitioner). In its petition the Association requests not only "(a) leave to intervene" but also:

"(b) a public hearing on the application,  
(c) an environmental impact statement covering the proposed facilities and the entire 765 kv network, and related generation, of which the facilities described in the application will be a part,  
(d) consolidation of the issues in Docket No. E-8414 with Projects No. 2685 and 2729 and (e) the right to be present at any and all conferences between the applicant and any representatives of the Commission or Commission Staff."

4. Applicant opposes the petition to intervene on the grounds that Petitioner does not have any interest whatsoever in the proposed facilities, and certainly does not have an interest of such a nature that intervention



is appropriate or necessary to the administration of the Executive Order under which the application is made. Petitioner has failed to show that its participation in the proceeding may be in the public interest.

5. The border crossing involved is approximately 180 miles north of the Durham Valley in Greene County, New York, where Petitioner's members own land. See map attached hereto as Exhibit A.

6. The petition seeks consolidation of the issues in this Presidential Permit proceeding, Docket No. E-8414, with the issues in the pending proceeding for approval of the location and design of Applicant's licensed transmission line to be constructed from the switchyard of Applicant's Blenheim-Gilboa Project No. 2685 to Leeds, New York, and with the issues in the pending proceeding for a license for Applicant's proposed Breakabeen Pumped Storage Power Project No. 2729.

7. The only ground cited by Petitioner in support of its request for leave to intervene in this proceeding is its allegation that the facilities for which the Presidential Permit is sought herein

"are part of a comprehensive integrated plan including Project Nos. 2685 and 2729

and additional generating and transmission facilities which will have a materially adverse impact on the Durham Valley area."

Petition does not describe the "additional generating and transmission facilities." This allegation says that Project Nos. 2685 and 2729 and any other electric facilities which might be constructed in the Durham Valley area of Greene County where Petitioner is located "will have a materially adverse impact on the Durham Valley area." While this is the ground on which Petitioner was permitted to intervene in the proceedings in Project Nos. 2685 and 2729, it fails to show any legitimate interest of Petitioner that may be affected by any action the Commission may take on the application for Presidential Permit or how the public interest may be served by Petitioner's participation in this proceeding.

8. There will be no direct connection between the facilities for which a Presidential Permit is sought herein and the facilities constituting Projects No. 2685 and 2729. The southern terminus of the transmission line which the Authority proposes to build from the border crossing point to the New York interconnected transmission system is near Utica approximately 70 miles from Applicant's Project No. 2685 and the proposed location for Project No. 2729. The only



physical connections between the facilities for which a Presidential Permit is sought herein and Project No. 2685 and the proposed Project No. 2729 are indirect transmission connections owned by others, not by Applicant.

9. No direct connection between the terminus of the transmission line from the Canadian border near Utica and Project Nos. 2685 and 2729 is presently planned or proposed. If such a direct connection is ever constructed it will be constructed for the purpose of strengthening the statewide interconnected transmission system and not specifically for the purpose of linking Project Nos. 2685 and 2729 with the border crossing involved in this Presidential Permit Application. In any event, such a direct connection will not be needed, if at all, until at least the early 1980s, long after the facilities involved in this Application and the facilities constituting Project Nos. 2685 and 2729 have been completed. In fact such a direct link may never be constructed since it is only one of several possible methods of strengthening the statewide interconnected transmission system in that area of the state.

10. Any interest which this Petitioner might have in this Presidential Permit proceeding could flow only from

the fact that the facilities at the Canadian border, approximately 180 miles from the Durham Valley involved in this proceeding, will be indirectly interconnected through the facilities of others to the facilities involved in Project Nos. 2685 and 2729. There is no other logical relationship between the facilities which are the subject of this Presidential Permit proceeding and Project Nos. 2685 and 2729.

11. If this Petitioner is allowed to intervene in this proceeding then it would be inconsistent to deny participation to any other group of persons owning property which may become a site of any facility the Authority might build or propose in the future, no matter how remote that site might be from the border crossing point here involved. The allowance of participation by such petitioners would follow from the fact that such other proposed facility would be interconnected at some point to the statewide transmission network and thus indirectly connected to the facilities at the border crossing. Clearly participation by this class of petitioners would not be in the public interest.

12. Furthermore if this Petitioner is allowed to intervene herein by virtue of the interconnection of electric



generating and transmission facilities in the State of New York there is no logical reason to limit the class of potential intervenors to persons who may be affected by projects built by the Authority. Since all electric generating and transmission facilities in the State of New York are interconnected the class of potential intervenors in this proceeding would logically include any person owning property in the vicinity of any electric transmission or generating facility which is proposed to be built by any person or organization anywhere in the State of New York.

13. In addition the electric system of the State of New York is interconnected with adjacent electric systems in New England and in the Pennsylvania, Maryland and New Jersey areas and through those areas to the rest of the country. If interconnection is the test of whether a petitioner should be allowed to intervene herein, there would be no logical reason to deny intervention to any petitioner located anywhere in the northeast, and perhaps in the entire country.

14. The power which Applicant is here asking the Federal Power Commission to exercise is the implied power

of the President as the "sole organ of the federal government, in the field of international relations." United States v. Pink, 315 U.S. 203, 229, quoting United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320, as delegated to the Commission by Executive Order No. 10485, the authority for which is found in 3 U.S.C. Section 301. That Executive Order states in part:

"WHEREAS the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas;"

The Petitioner has not shown that it has and it could not possibly have the requisite interest in the exercise of the President's implied power to conduct foreign relations to justify intervention in this proceeding.

15. The location and design of the Gilboa-Leeds Transmission Line of Project No. 2685 has absolutely nothing to do with the issues involved in this application for a Presidential Permit. The issues involved in the application for license for the proposed Breakabeen Project also have absolutely nothing to do with the issues involved in this application for a Presidential Permit.



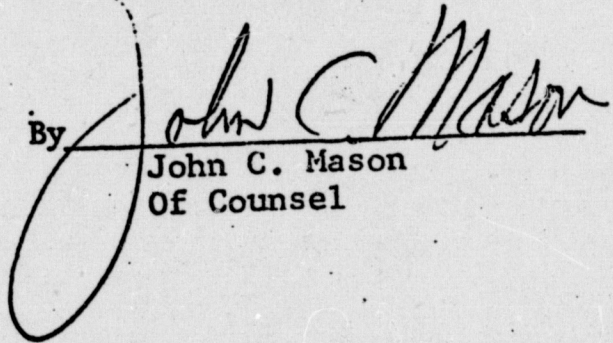
16. For the foregoing reasons, it would be contrary to the public interest to grant the petition to intervene.

17. The petition of Association for the Preservation of Durham Valley to Intervene in Docket No. E-8414 and the several requests made in the petition should be denied on the ground that Petitioner does not have an interest of such a nature that intervention is necessary or appropriate to the administration of the Executive Order under which the application for Presidential Permit was filed.

Respectfully submitted,

SCOTT B. LILLY  
General Counsel  
POWER AUTHORITY OF THE  
STATE OF NEW YORK

By



John C. Mason  
Of Counsel

OF COUNSEL:

Morgan, Lewis & Bockius  
1140 Connecticut Avenue, N. W  
Washington, D. C. 20036

St. Lawrence Project

Fl. Covington Border Crossing Point

Marcy Substation

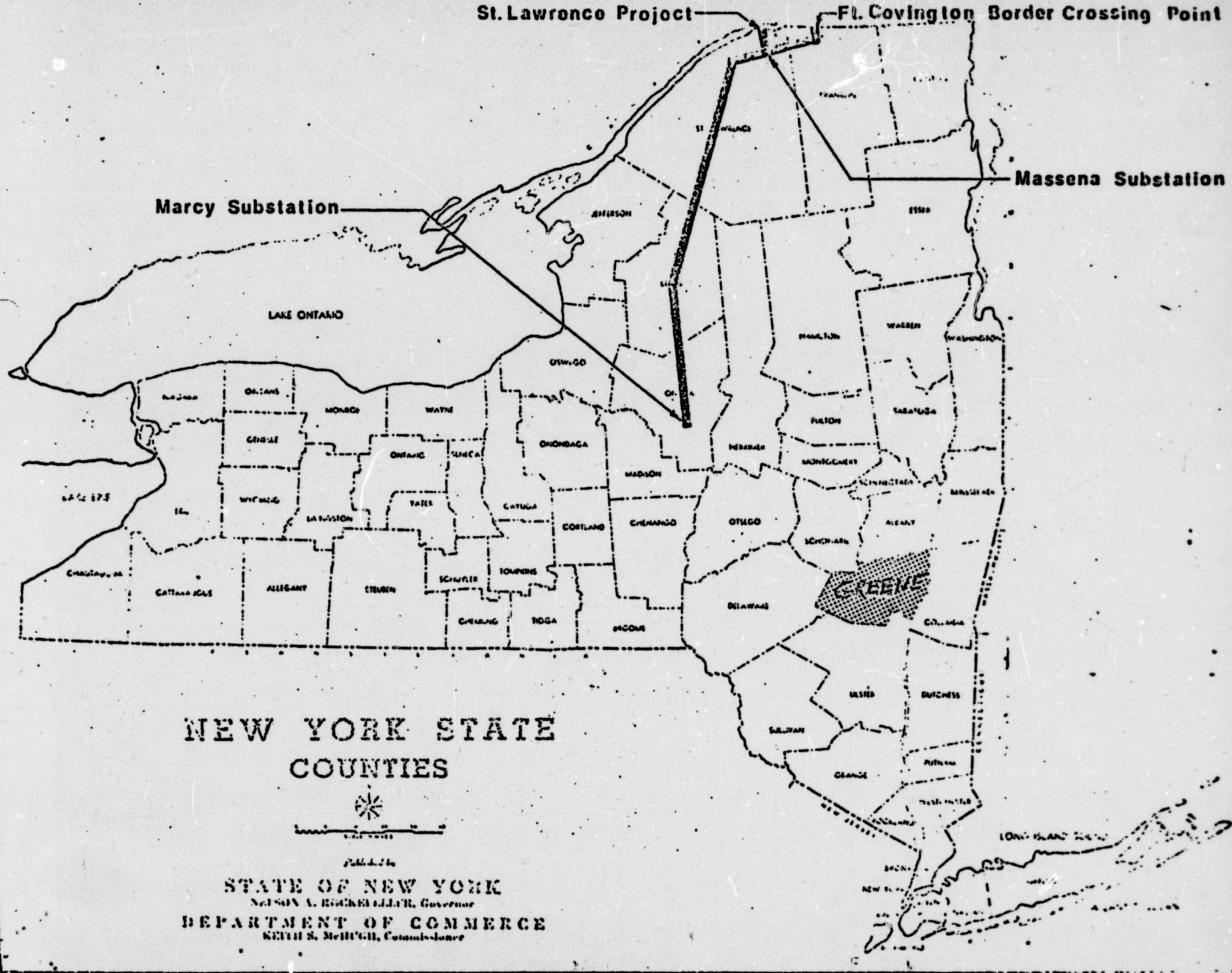
Massena Substation

LAKE ONTARIO

# NEW YORK STATE COUNTIES



STATE OF NEW YORK  
NELSON A. ROCKWELLER, Governor  
DEPARTMENT OF COMMERCE  
KEITH S. McHUGH, Commissioner



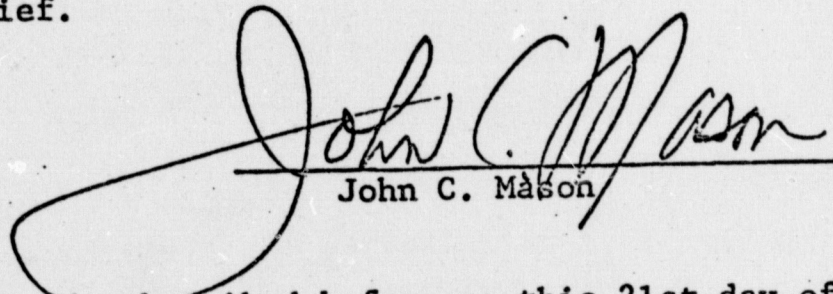


DISTRICT OF COLUMBIA ) SS:

V E R I F I C A T I O N

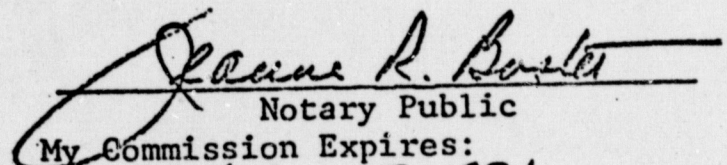
John C. Mason, being first duly sworn deposes and says:

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John C. Mason

Sworn to and subscribed before me this 21st day of December, 1973.

[SEAL]

  
Notary Public  
My Commission Expires:  
October 15, 1976

1. (DOCKET) ORIGINAL 0100

2. CENTRAL FILES

POWER AUTHORITY OF THE STATE OF NEW YORK

10 COLUMBUS CIRCLE

NEW YORK, N. Y. 10019

(212) 265-6510

TRUSTEES

IMES A. FITZPATRICK  
CHAIRMAN

GEORGE L. INGALLS  
VICE CHAIRMAN

WILLIAM J. RONAN

SYMOND J. LEE



July 3, 1974

GEORGE T. BERRY  
GENERAL MANAGER  
AND CHIEF ENGINEER

SCOTT B. LILLY  
GENERAL COUNSEL

WILBUR L. GRONBERG  
ASSISTANT GENERAL  
MANAGER - ENGINEERING

JOHN W. BOSTON  
DIRECTOR OF  
POWER OPERATIONS

THOMAS F. MCCRANN, JR.  
CONTROLLER

Hon. Kenneth F. Plumb  
Secretary  
Federal Power Commission  
825 No. Capitol St. N.E.  
Washington, D.C. 20426

Re: PWR-RC  
Docket No. E-8414

Dear Mr. Plumb:

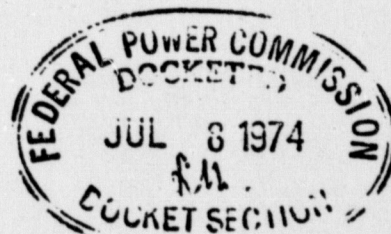
Response to your March 22 letter has been delayed pending completion of Congressional action on H.R. 14368 (now P.L. 93-319) which affects our application.

The information you requested is as follows:

1) Estimated receipts from Quebec during the first five years of operation of the interconnection are:

1977	$2.14 \times 10^9$ kwh.
1978	3.00 x " "
1979	3.00 x " "
1980	3.00 x " "
1981	3.00 x " "

2) Pay back energy cannot presently be estimated since its availability depends on future New York State and Quebec requirements. In any event, pay back is not expected to exceed receipts and will not require the construction of new facilities in New York beyond those needed for domestic supply.





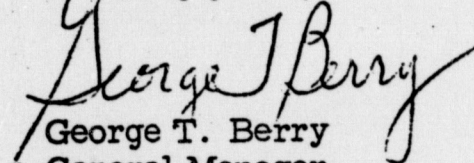
Hon. Kenneth F. Plumb

-2-

July 3, 1974

3) The export of energy from Quebec has been approved by Hydro-Quebec (contract enclosed) and by the Quebec Legislature. Proceedings for Canadian federal approval of export are pending. A copy of Hydro-Quebec's application to the National Energy Board will be sent under separate cover.

Sincerely yours,

  
George T. Berry  
General Manager

Enc.

BY AND BETWEEN

POWER AUTHORITY OF THE STATE OF NEW YORK, a corporation duly created pursuant to Chapter 772 of the Laws of 1931 of the State of New York one of the United States of America under Title I or Article V of the Public Authorities Law of the said State having its head office and principal place of business at 10 Columbus Circle, New York, New York 10019 hereinafter referred to as the "Authority"

Party of first part

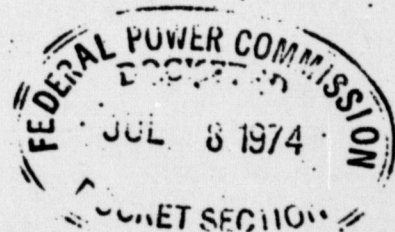
AND

QUEBEC HYDRO-ELECTRIC COMMISSION, a corporation duly created on April 14, 1944 by an Act of the Provincial Legislature of the Province of Quebec, having the powers vested in it by the Hydro-Quebec Act (1964 Revises Statutes of Quebec, Chapter 86 and amendments) having its head office and principal place of business at 75 Dorchester Boulevard West, Montreal H2Z 1A4, Province of Quebec, Canada, hereinafter referred to as "Hydro-Quebec"

Party of second part

In consideration of the mutual covenants and agreements of the parties hereinafter provided, the parties hereto mutually covenant and agree for the sale of power and energy by Hydro-Québec to the Authority and the exchange of energy between the parties as follows:

..2





## ARTICLE I

### Preamble

1.1 The parties hereto having recognized that an interconnection between the power systems in Quebec and New York will be mutually advantageous because of the diversity between their respective system loads, the parties hereby enter into a power contract providing for the sale and exchange of electric power and energy as hereinafter set forth.

1.2 Such power contract shall become effective upon all approvals, consents and licenses of governmental authorities and of other bodies, being secured as more particularly provided in article VIII hereof.

## ARTICLE II

### Interconnection Facilities

2.1 Hydro-Quebec will construct and operate extra high voltage alternating current transmission facilities leading from a extra high voltage station near Beauharnois to a point on the boundary between the Province of Quebec and the State of New York, being the international boundary between Canada and the United States of America, located approximately two miles east of Ft. Covington, New York. (hereinafter called the "International Boundary")

2.2 The voltage for the 60 hertz alternating current facilities will be 765 KV nominal but when transmitting to Quebec the facilities will be capable of being operated at 735 KV. The power factor of the isolated generating units connected to the interconnection facilities will be varied in such a way as to maintain, when required, up to 105% of the above stated voltages to the extent that the interconnection facilities will permit.

2.3 The authority : 1 construct and operate 60 hertz alternating current transmission facilities from the point of interconnection, at the International Boundary to an extra high voltage station near Massena New York, and thence to a point of major connection with its own system near Utica, N.Y. The Authority, in order to maintain proper operating voltage will install shunt reactors at the extra high voltage station near Massena, New York, and elsewhere as required. The capacities of the shunt reactors will be determined by mutual agreement following further joint studies.

2.4 Each party hereto will do whatever is necessary to its own system to enable it to discharge fully all obligations hereby entered into, due account being taken that the two (2) systems, except for facilities isolated for the purposes provided for in this contract, cannot be operated synchronously.

2.5 The parties will use their best efforts to complete, test and have the foregoing interconnection facilities ready for service prior to June 1, 1977.

2.6 Should the foregoing interconnection facilities not be ready for service in time to allow the delivery of the power and energy provided for herein, the obligations of Hydro-Quebec, to reserve for and to deliver to the Authority, and of the Authority, to purchase and pay for, the said power and energy, will be delayed until such time, not later than June 1, 1979, as the interconnection facilities become ready for service, provided that the parties have both acted with due diligence and such delay is not attributable to the fault or negligence of either of the parties. This will not have the effect of shortening the duration in years of the sale of Diversity Power contemplated in Section 3.1 hereof. However, the amounts of energy specified in Section 3.4



hereof will be lost to the Authority until the interconnection facilities are ready for service, on a prorata basis, except for such quantities as Hydro-Quebec may be able to deliver over its own facilities (or otherwise as may be agreed upon by the Operating Committee) to the electric system of the Authority and the Authority may be able to accept prior to final completion of the interconnection facilities.

### ARTICLE III

#### Delivery of Power and Energy

3.1 Hydro-Quebec will reserve and make available to the Authority at the International Boundary, and the Authority will purchase and pay Hydro-Quebec for, 800 MW of electric power, hereinafter called the "Diversity Power", and the energy associated thereto, each day during the months of June through October inclusive during the year 1977 and each day during the months of April through October inclusive each year thereafter up to and including the year 1996, subject to the provisions of Section 2.6 hereof, provided that Hydro-Quebec shall have the right by a seven (7) year prior written notice to the Authority to reduce the amount of Diversity Power any year after 1991 to the extent that the Expected Available Diversity Power for that year is less than 800 MW. The Expected Available Diversity Power for a given year shall be defined by the following formula:

The total amount of the Hydro-Quebec estimate of its required installed capacity including firm purchases for that year less:

- a) an amount equal to eight per cent (8%) of the said installed capacity,
- b) the Hydro-Quebec required installed reserve for that year taking into account hydraulic restrictions,

- c) the Hydro-Quebec forecast maximum peak demand, including twelve (12) month firm capacity sales, during the period from May through September for that year.

3.2 Daily and hourly schedules for the taking by the Authority of the Diversity Power, which will be hydroelectric power, will be established by the Authority such as not to exceed, during the first five (5) periods from 1977 through 1981 inclusive, the maximum amounts of energy associated with the Diversity Power specified in Section 3.4 hereof and, during the remaining fifteen (15) periods from 1982 through 1996 inclusive (subject to the proviso contained in Section 3.1 hereof) such as not to be less than the basic amount as defined in sub-paragraph b) of Section 3.5 hereof and not to exceed the maximum amount specified in Section 3.5 hereof. The schedules will be delivered to Hydro-Québec at least one (1) week in advance and will be prepared so as not to require Hydro-Quebec to increase or decrease the power supply by more than 200 MW each hour provided that Hydro-Quebec may agree, in any specific instance, to forego this limitation. The said schedules may be revised with the consent of the parties.

3.3 The Diversity Power will be available to the Authority throughout the periods mentioned in Section 3.1 hereof as follows:

a) 300 MW of Diversity Power will be continuously available twenty-four hours (24) per day throughout such periods and in addition,

b) another 300 MW of Diversity Power will be available from 09:01 hours to 15:00 hours Hydro-Quebec's system time for at least 95% of the week days Monday through Friday and will be continuously available at all other times and in addition,



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c) another 200 MW of Diversity Power will be available from 10:00 hours to 13:00 hours. Hydro-Quebec's system time for at least ninety per cent (90%) of the week days Monday through Friday and will be continuously available at all other times.

Hydro-Quebec will notify the Authority as promptly as practicable and in no event less than twenty-four (24) hours in advance of the extent of the unavailability of any Diversity Power. If the Authority notifies Hydro-Quebec that without the capacity, or part thereof, which is unavailable, the Authority foresees or is advised that a voltage reduction would have to be effected in the New York Metropolitan area, the Authority will have the right, on reasonable notice of not less than twenty-four (24) hours to Hydro-Quebec, to a supply of capacity and associated energy from thermal sources in substitution for unavailable Diversity Power, to the extent that the supply of such substitute capacity will not have the effect of reducing the spinning reserve on the Hydro-Quebec system below the minimum required and as determined by Hydro-Quebec, and provided that the Authority will pay to Hydro-Quebec the price for energy from thermal sources specified in Section 4.5 hereof.

3.4 During the five (5) month period from June 1, 1977 to October 31, 1977, Hydro-Quebec will deliver or make available to the Authority and the Authority will purchase from Hydro-Quebec, at the International Boundary, 2.14 billion kilowatthours of electric energy associated with the Diversity Power. Thereafter, during each seven (7) month period described in Section 3.1 hereof each year from 1978 through 1981 inclusive, Hydro-Quebec will deliver or make available to the Authority and the Authority will purchase from Hydro-Quebec at the International Boundary, 3 billion kilowatthours of electric energy associated with the Diversity Power. If, during any of the aforementioned five (5) month and seven (7) month periods, a quantity of energy up to a maximum of fifteen (15%) of the aforesaid amounts, is not delivered by Hydro-Quebec to the

Authority for any reason, such quantity will be delivered during the winter months next following at times mutually satisfactory to the parties. Any quantity of energy remaining undelivered to the Authority on the first day of April following each five (5) or seven (7) month periods shall be lost to the Authority, but the Authority shall then be entitled to the credit provided for in Section 4.7 hereof, if applicable.

3.5 As concerns the remainder of the term of years specified in Section 3.1 hereof, the parties hereto hereby agree as follows:

a) at least twenty-four (24) months prior to April 1, 1982 and to April 1 of any subsequent year, Hydro-Quebec will notify the Authority in writing of the amounts of energy associated with the Diversity Power that Hydro-Quebec is able and willing to sell to the Authority during the seven (7) month period(s) specified in the notice and the price(s) therefor which will not be less than those of comparable sales by Hydro-Quebec in Canada;

b) each amount of electric energy, herein called the "basic amount", and the price per kilowatthour therefor contained in the said notice will constitute, for the period therein mentioned, the amount of electric energy associated with the Diversity Power which Hydro-Quebec will deliver or make available to the Authority and which the Authority will purchase from Hydro-Quebec and the price per kilowatthour therefor, unless the Authority will have advised Hydro-Quebec in writing, within six (6) months of the receipt of the said notice, that the Authority wishes to purchase a lesser amount of energy, in which case the basic amount will be reduced accordingly, and/or to discuss the price for such energy, in which case the parties will negotiate and if a lesser price is agreed upon by the parties, then it will become the price for the basic amount;



c) if, at least one (1) year prior to the start of any period, the parties hereto have not agreed upon a price for energy during the said period, the basic amount for that period will be zero (0) kilowatthour and the price for any energy taken by the Authority during the said period under the provisions of the following sub-paragraph d) will be (i) the price mentioned in the notice given by Hydro-Quebec for energy during that period or (ii) a price equal to the average incremental cost of the most costly fifty million (50,000,000) kilowatthours produced or purchased by the utility then serving the City of New York, during the week (00:00 hour Monday - 24:00 hour Sunday) of the most recent Summer peak load of the said utility, whichever is the lesser;

d) whenever the basic amount for any period is less than 3 billion kilowatthours, the Authority will have the right to take, during such period, energy in excess of the basic amount, up to a number of kilowatthours which, when added to the basic amount, will not exceed 3 billion kilowatthours, at the price per kilowatthour agreed upon for the basic amount, or at the price specified in sub-paragraph c) above, as the case may be, the whole subject to the provisions of Sections 3.2 and 3.3 hereof, but then the Authority will have the obligation to return to Hydro-Quebec during the Winter months, at times convenient to the Authority and under such electrical system configuration as the parties will determine, at the same price, an amount of energy equal to the excess over the basic amount taken by the Authority during such period, unless the parties agree to reduce or to cancel completely the amount of energy to be so returned by the Authority; the failure by the Authority to return to Hydro-Quebec any amount of energy subject to such return on or before April 1 each year will render the Authority subject to the payment

to Hydro-Quebec of a premi equal to fifty (50%) per cen of the price for each kilowatthour which the Authority will have failed to return to Hydro-Quebec for any reason other than the inability of Hydro-Quebec to take such energy because of its system limitations and to the extent of such inability. Hydro-Quebec will pay to the Authority a rebate equal to fifty (50%) per cent of the price paid by the Authority for each kilowatthour which the Authority will have had available for return and offered to Hydro-Quebec and which Hydro-Quebec will not have taken prior to April 1 each year.

3.6 The parties may, at any time, by mutual consent, modify the basic amount of electric energy associated with the Diversity Power for any period.

3.7 In the event that the Diversity Power is reduced for any year after 1991 in conformity with the provisions of Section 3.1 hereof, each of the quantities of Diversity Power and energy respectively stated in Section 3.3 and in paragraph d) of Section 3.5 hereof will be reduced for that year by a quantity proportionate to the reduction of Diversity Power for that year.

#### ARTICLE IV

##### Liability, Charges and Payments

4.1 The Authority will pay Hydro-Quebec, each month that Diversity Power has been reserved and made available by Hydro-Quebec to the Authority in Canadian funds, per kilowatt per month, \$1.36 during the first five (5) years from 1977 through 1981 inclusive, \$1.54 during the following five (5) years from 1982 through 1986 inclusive, \$1.75 during the following five (5) years from 1987 through 1991 and, subject to the proviso contained in Section 3.1 hereof, \$2.01 during the last five years from 1992 through 1996 inclusive and an amount of \$2.23 during any period after 1996 resulting from the



application of the provision of Section 2.6 hereof.

4.2 In addition, the Authority will pay Hydro-Quebec, monthly, for the energy associated with the Diversity Power delivered:

i) during the first five (5) years from 1977 through 1981 inclusive, at the following prices:

<u>Year</u>	<u>Price per KWH in Canadian Mills</u>
1977	5.676
1978	5.903
1979	6.139
1980	6.385
1981	6.640

ii) thereafter, at such price or prices as will have been determined in accordance with the provisions of Section 3.5 hereof.

The energy charge in respect of the last month of each five (5) or seven (7) month period during the term hereof will be adjusted to include the price of any energy purchased and made available but not taken by the Authority, subject to the provisions of Section 4.6 hereof.

4.3 Bills for the power and energy charges will be (i) sent by Hydro-Quebec to the Authority as soon as possible the month after the end of each month during which Diversity Power was reserved and made available by Hydro-Quebec to the Authority and (ii) will be payable by the Authority within fifteen (15) days of their receipt, all arrears after thirty (30) days being subject to interest at the rate of one (1) per cent per month.

4.4 Bills for any energy returned by the Authority to Hydro-Quebec under the provision of sub-paragraph d) of Section 3.5 hereof will be (i) sent by the Authority to Hydro-Quebec as soon as possible the month after the end of each month during which any energy was so returned by the Authority

And (ii) will be payable by Hydro-Quebec within fifteen (15) days of their receipt, all arrears after thirty (30) days being subject to interest at the rate of one (1) per cent per month.

4.5 For any energy supplied by Hydro-Quebec to the Authority from thermal sources during any month, as specified in Section 3.3 hereof, the Authority will pay to Hydro-Quebec an additional price per kilowatthour which will render the price of such energy equivalent to one hundred and ten per cent (110%) of Hydro-Quebec's hour-by-hour cost of generating and delivering such energy, including in such hour-by-hour cost of generating and delivering any start-up cost if they apply, the whole as determined by Hydro-Quebec.

4.6 In the event that Hydro-Quebec does not make available to the Authority the full amount of scheduled Diversity Power on any day on which such power should have been available to the Authority in accordance with the provisions of ARTICLE III hereof, the monthly payment by the Authority will be reduced by the respective amount per megawatt per day of reduction hereinafter shown opposite each period of years, for the amount of the Diversity Power scheduled but not made available on each such day, except for a reduction lasting less than thirty (30) minutes due to failure of equipment used to supply such Diversity Power:

<u>Period of years</u>	<u>Reduction / MW / Day</u>
1977-1981	\$44.50
1982-1986	\$50.40
1987-1991	\$57.25
1992-1996	\$65.75
1997-1998	\$72.95



4.7. . . For any energy associated with the Diversity Power scheduled by the Authority for delivery during any of the five (5) month and seven (7) month periods contained in the term of years specified in Section 3.1 hereof which Hydro-Quebec will have been unable to deliver to the Authority during the following winter months prior to April 1, the Authority will be entitled to a credit, which will be applied on account of its next purchases of power and energy from Hydro-Quebec, equivalent to the number of the undelivered kilowatthours times the rate per kilowatthour already paid by the Authority on account of such undelivered energy.

4.8 All payments due by the Authority to Hydro-Quebec will be effected in Montreal, P.Q., Canada, in Canadian funds.

4.9 All payments due by Hydro-Quebec to the Authority will be effected in New York, State of New York, United States of America, in the U.S. equivalent of Canadian Funds determined in accordance with the rate of exchange quoted by the Bank of Canada (for purchases of U.S. funds) in effect at noon on the last business day of the monthly period covered by the bill.

#### ARTICLE V

##### Metering

5.1 Measurement of the electrical power and energy delivered by either party hereunder shall be effected at the extra high voltage station near Beauharnois by means of suitable polyphase recording and integrating meters as agreed upon by the parties. The measurements will be corrected by

taking into account losses between the said extra high voltage station and the International Boundary. The measuring equipment will be provided, installed, maintained and tested by Hydro-Quebec, to accuracy standards agreed to by both parties. Each party will provide the other with such telemetered and other operating information as the Operating Committee determines to be necessary.

5.2 The Authority shall have the right to require Hydro-Quebec to test any such measuring equipment in the presence of a representative of the Authority upon giving to Hydro-Quebec seven (7) days' prior notice in writing of the time of such test.

5.3 Hydro-Quebec shall repair or replace and retest defective measuring equipment within a reasonable time of its becoming defective, and during the time there is no metering equipment in service, or the metering equipment has been determined to be inaccurate, the power and energy delivered shall be determined by way of such other means or information as shall be available at the time, including information supplied by the Authority.

#### ARTICLE VI

##### Force Majeure

6.1 Neither party shall be liable for injury, damage or loss resulting from the supply, non supply or quality of electricity hereunder nor from loss or damage resulting from uncontrollable forces, the term uncontrollable forces being deemed for the purpose of this contract to mean any cause beyond the control of either of the parties including but not limited to failure of facilities,



flood, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance, labor trouble, strike, sabotage and restraint by court or public authority, which by exercise of due diligence and foresight either party could not reasonably be expected to avoid, if either party is rendered unable to fulfill any obligations by reason of such uncontrollable forces it shall exercise due diligence to correct such inability with all reasonable dispatch.

6.2. The power and energy made available to the Authority by Hydro-Quebec in virtue of the present contract will be available to the Authority according to Section 3.3 hereof. However, Hydro-Quebec will not be held responsible and hereby declines responsibility for any loss or damage sustained by the Authority or by third parties, if for any cause or reason whatsoever which could prevent the delivery of energy and power, Hydro-Quebec interrupts or diminishes the delivery of energy or power as provided herein.

6.3 Neither party shall make any claim upon the other by reason of one party's circuits and system being damaged or rendered inoperative for any period as a result of an occurrence on the circuits and system of the other party. Without limiting the generality of the foregoing, neither party shall be held responsible for any loss or damage sustained by the other party or by third parties, if for any reason whatsoever the voltage of the power and energy delivered hereunder to the other party is increased, decreased or in any way affected for whatever length of time.

6.4 The Authority will not be responsible for any and all damages sustained by third parties from whatever cause if such damage or damages have been sustained on Hydro-Quebec's side of the International Boundary. Hydro-Quebec will not be responsible for any and all damages sustained by third

parties from any cause whatsoever if such damage or damages have been sustained on the Authority's side of the International Boundary.

## ARTICLE VII

### Operating Committee, Interconnection Agreement and Arbitration

7.1 There is hereby created an Operating Committee the constitution and function of which shall be as follows:

a) The Operating Committee will consist of four (4) members, two (2) of whom are named by the Authority and two (2) of whom are named by Hydro-Quebec. Any member should he be unable to attend a meeting of the Operating Committee will be represented at such meeting by a person named in writing either by such member or by the person to whom such member reports administratively;

b) The Operating Committee is authorized on behalf of both parties to do all things necessary to ensure delivery of and payment for power and energy in accordance with the provisions and intent of this Power Contract and any Interconnection Agreement between the parties;

c) All decisions of the Operating Committee in respect to matters within its jurisdiction will be unanimous;

d) Each party will, upon the request of the Operating Committee, supply promptly to it any and all documents required to substantiate any fact pertaining to its mandate.

7.2 The parties hereto agree to negotiate and enter into an Interconnection Agreement in order to allow for mutual assistance in the case of emergencies and to provide additional benefits to their respective systems as a result of



coordinated operation by means of the interconnection facilities, including the purchase and sale of surplus capacity and energy.

7.3 In the event any dispute or disputes between the parties hereto shall arise, then the same shall be settled by binding arbitration. The board of arbitrators will be composed in the following manner: each party shall appoint one arbitrator which of necessity shall be an engineer and the two (2) arbitrators so appointed shall choose a jurist to act as third arbitrator and the said jurist will have to be unanimously chosen from a list of ten (10) jurists who are members of the Bar, the said list to be agreed upon by the parties hereto within twelve (12) months of the signature of the present power contract. In the event that the two (2) arbitrators chosen by each party cannot agree on the choice of the third arbitrator, then the said third arbitrator shall be chosen among the said list of ten (10) jurists by the Chief Justice of the Superior Court of the district of Montreal, Province of Quebec or by a judge of the said Court selected by him and the said choice shall be binding upon both parties. The parties hereto agree that upon mutual consent the said list of arbitrators can be modified in the future as to its principle of composition, number of members, replacement or otherwise.

7.4 This agreement shall be governed by and construed in accordance with the Laws of the Province of Quebec.

#### ARTICLE VIII

##### Permits, Consents and Approvals

8.1 Hydro-Quebec will undertake forthwith steps or negotiations for obtaining all requisite Canadian and provincial consents and approvals for the

international interconnection and for the transmission and delivery of power and energy to the Authority at the International Boundary.

8.2 The Authority will undertake forthwith steps or negotiations for obtaining all requisite land rights and United States, state and local permits and approvals required for the international interconnection, for the purchase of power and energy from Hydro-Quebec at the International Boundary and for the transmission of such power and energy from the International Boundary to connections with its own system. It is recognized that the Authority has the problem of obtaining land rights to avoid or to cross lands subject to New York State constitutional restrictions in the Adirondack Forest Preserve counties in North-eastern New York State and of installing overhead transmission lines.

8.3 The parties agree that everything herein contained is contingent upon the receipt of all required Canadian, provincial, United States and State or local consents, permits, approvals and land rights by Hydro-Quebec and by the Authority for the construction of the international interconnection, for the purchase and sale of power and energy and for the transmission and delivery of electric power and energy at and from the International Boundary, upon terms satisfactory to the affected party or parties. Each party hereto will cooperate with the other in the furnishing of technical information, data, or other matter which may be reasonably required for the procuring of such consents, permits, approvals and land rights.

8.4 Each of the parties hereto agrees to notify the other party promptly of any fact or matter which, in its opinion, could substantially affect the arrangements made hereby, each party specifically reserving the right to terminate such arrangements should they be so materially affected or should any consent, permit, approval or acquisition of land rights be withheld or tendered upon terms unsatisfactory to any party hereto.



8.5 The parties hereto agree that they will act with diligence to do all things necessary to carry out their undertakings hereunder.

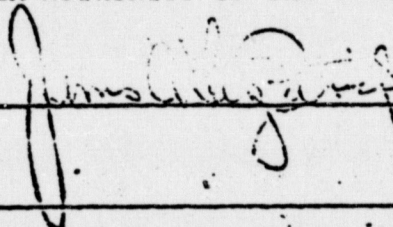
#### ARTICLE IX

##### Assignability

9.1 Except in the event of merger, consolidation, or sale of all, or substantially all, of the assets of either party devoted to the production, transmission, distribution and sale of electricity, no voluntary transfer of the contract or of the rights of either party hereunder shall be made without the written approval of the other party; provided that in any event any successor to or assignee of the rights of either party, whether by voluntary transfer, judicial sale, foreclosure sale or otherwise, shall be subject to all of the provisions and conditions of this contract to the same extent as though such successor or assignee were the original party hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives, the Authority at New York on the 28th day of November 1973 and Hydro-Quebec at Montreal on the 29th day of March 1974.

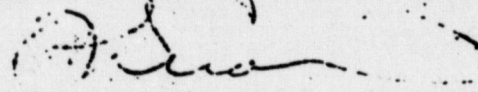
POWER AUTHORITY OF THE STATE OF NEW YORK



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QUEBEC HYDRO-ELECTRIC COMMISSION



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FEDERAL POWER COMMISSION  
WASHINGTON 20426

Docket No. E-8414  
Power Authority of the State of  
New York

AUG 2 1974

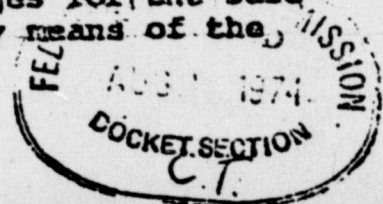
Honorable James R. Schlesinger  
The Secretary of Defense  
Washington, D. C. 20301

Dear Mr. Secretary:

C Pursuant to the provisions of Executive Order  
No. 10485, dated September 3, 1953, and the Rules and Regu-  
lations of the Commission thereunder, Power Authority of the  
State of New York (PASNY) filed an application on  
September 21, 1973, as supplemented on July 8, 1974, in  
Docket No. E-8414 for permission to construct, operate, main-  
tain and connect at the international border between the  
United States and Canada certain facilities for the trans-  
mission of electric energy between the United States and  
Canada.

P The proposed facilities consist of one three-phase,  
60 hertz, 765,000 volt overhead transmission line supported  
on a steel lattice tower located approximately two miles east  
of the Village of Fort Covington, Franklin County, New York,  
and extending to the international border, there connecting  
with a like line owned by the Quebec Hydro-Electric Commission  
(Hydro-Quebec) and located in the Province of Quebec.

Y The transmission line proposed to be constructed,  
operated and connected by PASNY at the United States-Canadian  
border near Fort Covington, as described above, is part of  
the proposed international interconnection known as the  
Massena-Quebec 765 kv Tie, which is provided for in the Power  
Contract between PASNY and Hydro-Quebec. A copy of the Power  
Contract was submitted by PASNY with the supplement to its  
application. The Power Contract, which was signed by PASNY  
on November 28, 1973, and by Hydro-Quebec on March 29, 1974,  
recites that "an interconnection between the [electric] power  
systems in Quebec and New York will be mutually advantageous  
because of the diversity between their respective system  
loads". The general nature and location of the transmission  
facilities to be constructed and operated on each side of the  
border for effectuating the interconnection, as well as the  
terms and conditions and the rates and charges for the sale  
and exchange of electric power and energy by means of the,





Honorable James R. Schlesinger - 2 -

interconnection, are stated and prescribed in the Power Contract. PASNY's proposed substation at or near Massena, St. Lawrence County, New York will be the western terminus of the Tie and Hydro-Quebec's proposed substation at or near Beauharnois, Province of Quebec, will be the eastern terminus of the Tie. PASNY's line at the border, for which the permit is sought under the aforementioned Executive Order, will be a segment of its proposed 765,000 volt line extending from the border to the Massena substation. Hydro-Quebec's line at the border will be a segment of its proposed 765,000 volt line extending from the Beauharnois substation to the border. PASNY and Hydro-Quebec will construct and operate such additional facilities as are necessary to connect the substations at Massena and Beauharnois with generating plants on their electric systems.

Electric power and energy transmitted from Quebec to New York by means of the proposed international interconnection will, as indicated above, be sold, purchased and delivered in accordance with the provisions of the Power Contract. In general, Hydro-Quebec will make available to PASNY 800 megawatts of "Diversity Power," which will be hydroelectric power, each day during (1) June through October, 1977, and (2) April through October, 1978 to 1996, inclusive. Hydro-Quebec is, in addition, obligated to deliver to PASNY a total of 2.14 billion kilowatt-hours of energy associated with "Diversity Power" during June through October, 1977, and a total of 3 billion kilowatt-hours of such energy during April through October, 1978 to 1981, inclusive. Deliveries of energy associated with "Diversity Power" during certain months in the years 1982 through 1996 are also provided for, but if PASNY's receipts of energy from Hydro-Quebec exceed the "basic amount" specified in the Power Contract for any period of time, then in that event PASNY must return to Hydro-Quebec, during the winter months, a quantity of energy equal to such excess. It is anticipated that the power and energy transactions between PASNY and Hydro-Quebec will substantially increase PASNY's electric supply resources for carrying out its electric service responsibilities.

An environmental impact statement with respect to the Commission's issuance of the permit under Executive Order No. 10485 to PASNY for the Fort Covington facilities is not required by reason of Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319, approved June 22, 1974, 88 Stat. 246), which reads as follows:

Honorable James R. Schlesinger - 3 -

In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to Section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.

There is enclosed for your consideration a draft of the permit applied for by PASNY, incorporating terms and conditions which you and the Secretary of State have heretofore required in other similar cases. In addition, there are transmitted herewith a copy of PASNY's application, including the exhibits which are a part of the application, a copy of PASNY's letter-supplement to its application, and a copy of the Power Contract.

The Commission would appreciate receiving your views with respect to the issuance of the permit and the language contained in the enclosed draft of the permit at an early date in order that such action may be taken as is contemplated by Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974 and the provisions of Executive Order No. 10485 and as may be appropriate in the light of your response and that of the Secretary of State in this matter.

A similar letter, together with a draft of the permit and copies of PASNY's application, including exhibits, the letter-supplement to the application, and the Power Contract, is being simultaneously transmitted to the Secretary of State.



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Honorable James R. Schlesinger

- 4 -

If the Secretary of State should make an unfavorable recommendation or propose any material change in the draft of the permit, the Commission will immediately so advise you.

Sincerely,

JOHN N. NASSIKAS

John N. Nassikas  
Chairman

Enclosures: Draft of Permit

Copy of Application for Permit,  
including Exhibits

Copy of PASNY's Letter, dated July 3 and  
filed July 8, 1974, Supplementing Application  
for Permit

Copy of Power Contract

*Certified File*

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FEDERAL POWER COMMISSION  
WASHINGTON 20426

AUG 2 1974

Docket No. E-8414  
Power Authority of the State of  
New York

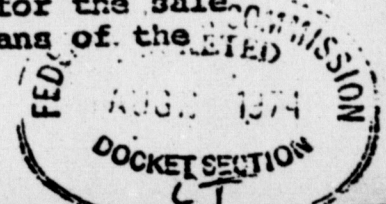
Honorable Henry A. Kissinger  
The Secretary of State  
Washington, D. C. 20520

Dear Mr. Secretary:

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P The proposed facilities consist of one three-phase, 60 hertz, 765,000 volt overhead transmission line supported on a steel lattice tower located approximately two miles east of the Village of Fort Covington, Franklin County, New York, and extending to the international border, there connecting with a like line owned by the Quebec Hydro-Electric Commission (Hydro-Quebec) and located in the Province of Quebec.

Y The transmission line proposed to be constructed, operated and connected by PASNY at the United States-Canadian border near Fort Covington, as described above, is part of the proposed international interconnection known as the Massena-Quebec 765 kv Tie, which is provided for in the Power Contract between PASNY and Hydro-Quebec. A copy of the Power Contract was submitted by PASNY with the supplement to its application. The Power Contract, which was signed by PASNY on November 28, 1973, and by Hydro-Quebec on March 29, 1974, recites that "an interconnection between the [electric] power systems in Quebec and New York will be mutually advantageous because of the diversity between their respective system loads". The general nature and location of the transmission facilities to be constructed and operated on each side of the border for effectuating the interconnection, as well as the terms and conditions and the rates and charges for the sale and exchange of electric power and energy by means of the





Honorable Henry A. Kissinger - 2 -

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Honorable Henry A. Kissinger

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There is enclosed for your consideration a draft of the permit applied for by PASNY, incorporating terms and conditions which you and the Secretary of Defense have heretofore required in other similar cases. In addition, there are transmitted herewith a copy of PASNY's application, including the exhibits which are a part of the application, a copy of PASNY's letter-supplement to its application, and a copy of the Power Contract.

The Commission would appreciate receiving your views with respect to the issuance of the permit and the language contained in the enclosed draft of the permit at an early date in order that such action may be taken as is contemplated by Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974 and the provisions of Executive Order No. 10485 and as may be appropriate in the light of your response and that of the Secretary of Defense in this matter.

A similar letter, together with a draft of the permit and copies of PASNY's application, including exhibits, the letter-supplement to the application, and the Power Contract, is being simultaneously transmitted to the Secretary of Defense.



Honorable Henry A. Kissinger

- 4 -

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If the Secretary of Defense should make an unfavorable recommendation or propose any material change in the draft of the permit, the Commission will immediately so advise you.

Sincerely,

JOHN N. NASSIKAS

John N. Nassikas  
Chairman

Enclosures: Draft of Permit

Copy of Application for Permit,  
including Exhibits

Copy of PASNY's Letter, dated July 3 and  
filed July 8, 1974, Supplementing Application  
for Permit

Copy of Power Contract



ID

INSTALLATIONS AND LOGISTICS

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

0001 RECEIVED

AUG 19 1974

FEDERAL POWER  
COMMISSION  
15 AUG 1974

Honorable John N. Nassikas  
Chairman  
Federal Power Commission  
Washington, D. C. 20426

E-8414

Dear Mr. Chairman:

This is in response to your letter of August 2, 1974 to Secretary Schlesinger regarding the application in Docket No. E-8414 of the Power Authority of the State of New York, requesting a permit for the construction, operation and maintenance of an extra-high-voltage electrical transmission line at the international border between the United States and Canada.

It is noted that the proposed facility will consist of one three-phase, 60 Hertz, 765 KV overhead line located approximately two miles east of the Village of Fort Covington, Franklin County, New York, connecting at that point across the international boundary with a similar line owned by the Quebec Hydro-Electric Commission. It is further noted that the purpose of this transmission line is to transmit power from Canada into the United States.

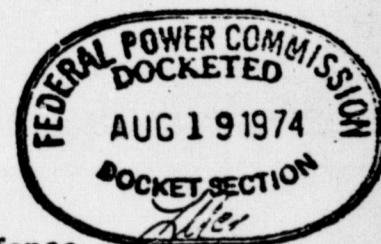
Accordingly, pursuant to authority delegated to me, this is to advise you that the Department of Defense is not aware of any existing reason to withhold approval of the request as described in the Docket noted above. The language of the draft permit enclosed with your letter is acceptable to this office provided that the words "New York City" are inserted in the blank space in Article 3.

Sincerely yours,

*Perry J. Fliakas*

Perry J. Fliakas

Acting Deputy Assistant Secretary of Defense  
(Installations and Housing)







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DEPARTMENT OF STATE

Washington, D.C. 20520

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AUG 23 1974

SECRETARY'S OFFICE

AUG 22 1974

*E-8414*

Honorable John N. Nassikas  
Chairman  
Federal Power Commission  
Washington, D.C. 20426

Dear Mr. Chairman:

I wish to acknowledge your letter of August 2 requesting the views of the Department of State on the application made by the Power Authority of the State of New York (Docket No. E-8414) for a permit to construct, operate, maintain and connect at the international border between the United States and Canada certain facilities for the transmission of electrical energy between the United States and Canada. These facilities will be located near Fort Covington, New York.

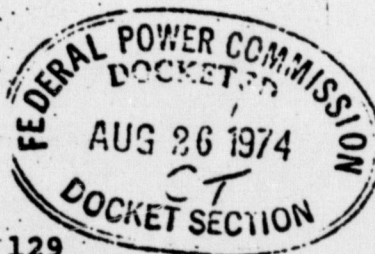
The Department has considered the material enclosed with your letter and supports the issuance of the permit in order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to assure an adequate energy supply for New York. The Department finds the language in the draft permit acceptable and has no revisions or additions to suggest.

Sincerely,

*Thomas O. Enders*

Thomas O. Enders  
Assistant Secretary for  
Economic and Business Affairs

*O.S.6  
Levy  
D.E.  
Dior*



SEP 19 1974

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;  
Albert B. Brooke, Jr., Rush Moody, Jr.,  
and Don S. Smith.

Power Authority of the )  
State of New York )

Docket No. E-8414



ORDER GRANTING INTERVENTIONS  
AND DENYING REQUESTS FOR  
HEARING AND CONSOLIDATION

(Issued September 13, 1974)

On September 21, 1973, the Power Authority of the State of New York (PASNY) filed with the Federal Power Commission pursuant to Executive Order No. 10485 of September 3, 1953, an application for authorization to construct, operate, maintain and connect certain electric transmission facilities at a point on the United States-Canadian boundary near the Town of Fort Covington, Franklin County, New York. Public notice thereof was given by the Commission on October 16, 1973, calling for all parties to intervene and protests to be filed on or before November 7, 1973.

On November 7, 1973, Greene County Planning Board tendered for filing pursuant to Section 1.8 of the Commission's Rules, a Petition to Intervene in this proceeding, wherein the proposed transmission facilities are alleged to work harm to the construction location's environment and form part of a comprehensive integrated plan for the addition of unnecessary and ill-planned transmission and generation facilities including Project Nos. 2685 and 2729, adversely impacting upon Greene County. In addition to the grant of intervention, the Board petitions the Commission for (1) conduct of a public hearing upon the

DC-24



application, (2) preparation of an environmental impact statement upon the proposed facilities and the entire 765 kv network and related generation of which the instant facilities form a part, (3) consolidation of the issues raised herein with Project Nos. 2685 and 2729, and (4) the right to be present at all conferences held in this proceeding. Similar allegations are asserted and relief requested within two separate Petitions to Intervene filed out-of-time on December 10, 1973 by (1) the Association for the Preservation of Durham Valley and (2) Peter J. O'Reilly of Beaver Falls, New York.

In answer to each Petition to Intervene, PASNY notes that petitioners fail to show (1) any legitimate interests affected by Commission action herein, and (2) any direct connection between the proposed transmission facilities and Project Nos. 2685 and 2729. Since petitioners fail to demonstrate how their participation falls within the public interest, PASNY concludes that the Commission should deny the Petitions to Intervene and reject petitioners' requests for hearing, consolidation, and impact statement preparation.

Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974, 88 Stat. 2 46, passed June 22, 1974, explicitly directs the Federal Power Commission "... to issue a Presidential permit... for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement... for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York." 1/

---

1/ " 7(d) In order to expedite the prompt construction of facilities for the importation of hydroelectric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to Section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York." (88 Stat. 260)

Requests made to the Commission by petitioners for the conduct of a public hearing, consolidation, and impact statement preparation herein clearly must yield to the strong Section 7(d) exemption and directive charged the Commission by the Congress on June 22, 1974. Since Congress directs that the Presidential Permit to PASNY shall issue without the preparation of an environmental impact statement, petitioners' requests for public hearing, consolidation and impact statement preparation herein fall moot and should therefore be denied. Petitioners' interests however are sufficiently drawn to indicate that their participation herein may be in the public interest pursuant to Section 1.8 of the Commission's Rules, and intervention should be accordingly granted.

The Commission finds:

(1) The Greene County Planning Board, the Association for the Preservation of Durham Valley, and Peter J. O'Reilly should be permitted to intervene in this proceeding, subject to the Commission's Rules and Regulations.

(2) Petitioners' requests for conduct of a public hearing, preparation of an environmental impact statement, and consolidation should be denied.

The Commission orders:

(A) The Greene County Planning Board, the Association for the Preservation of Durham Valley, and Peter J. O'Reilly are hereby permitted to intervene in this proceeding, subject to the Commission's Rules and Regulations.

(B) Petitioners' requests for conduct of a public hearing, preparation of an environmental impact statement and consolidation are denied.

(C) The petitions of the aforementioned to intervene are granted, provided that the admission of such intervenors shall



Docket No. E-8414

-4-

not be construed as recognition by the Commission that said intervenors might be aggrieved because of any order or orders issued by the Commission in these proceedings.

By the Commission.

( S E A L )

Kenneth F. Plumb,  
Secretary.

FEDERAL POWER COMMISSION  
WASHINGTON, D.C. 20426

SEP 16 1974

IN REPLY REFER TO:

Power Authority  
of the State  
of New York

Docket No. E-8414

Power Authority of the  
State of New York  
10 Columbus Circle  
New York, New York 10019

SEP 13 1974

Attention: George T. Berry, General Manager and  
Chief Engineer

Gentlemen:

Enclosed is one original copy of the Permit of Power Authority of the State of New York signed by the Chairman of the Federal Power Commission on September 13, 1974 in Docket No. E-8414 and released herewith. The Permit authorizes, pursuant to Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319, approved June 22, 1974, 88 Stat. 246), the provisions of Executive Order No. 10485, dated September 3, 1953, and the Commission's Rules and Regulations under said order, the construction, operation, maintenance and connection of certain 765,000 volt facilities at the international border between the United States and Canada in the vicinity of Fort Covington, New York, for the transmission of electric energy between the United States and Canada.

By direction of the Commission.

Secretary

Enclosure No. 099069

cc: All Parties

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# FEDERAL POWER COMMISSION

## WASHINGTON, D. C.

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POWER AUTHORITY OF THE STATE OF NEW YORK

ELECTRIC TRANSMISSION FACILITIES  
AT THE INTERNATIONAL BOUNDARY

RECEIVED

NOV 10 1954

PERMIT

AUTHORIZING

POWER AUTHORITY OF THE STATE OF NEW YORK

TO CONSTRUCT, OPERATE, MAINTAIN AND CONNECT

ELECTRIC TRANSMISSION FACILITIES

AT THE INTERNATIONAL BORDER BETWEEN

THE UNITED STATES AND CANADA

(Federal Power Commission-Docket No. E-8414)

Power Authority of the State of New York (hereinafter referred to as Permittee), a body corporate and political subdivision of the State of New York, with its principal place of business at New York, New York, in an application filed on September 21, 1973, as supplemented on July 8, 1974, in Docket No. E-8414, requested permission, pursuant to Executive Order No. 10485, dated September 3, 1953, to construct, operate, maintain and connect at the international border between the United States and Canada the facilities described in Article 2 below for the transmission of electric energy between the United States and Canada.

The Secretary of State by letter dated August 22, 1974 and the Secretary of Defense by letter dated August 15, 1974 favorably recommended that the Permit be granted herein as hereinafter provided.

Upon consideration of this matter, the Commission finds that the issuance of the Permit as hereinafter provided is appropriate and consistent with the public interest.

Pursuant to Section 7(d) of the Energy Supply and En-

approved June 22, 1974, 66 Stat. 249), the provisions of Executive Order No. 10485, dated September 3, 1953, and the Commission's Rules and Regulations under said order, permission is hereby granted to Permittee to construct, operate, maintain and connect the electric transmission facilities described in Article 2 below at the international border between the United States and Canada upon the conditions hereinafter set forth.



Article 1. The facilities herein described shall be subject to all conditions, provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the United States or by the Commission, and may be amended by the Commission on proper application therefor.

Article 2. The facilities covered by and subject to this Permit shall include, in addition to the following, all lands and supporting structures within the rights-of-way occupied by such facilities:

One three-phase, 60 hertz, 765,000 volt overhead transmission line supported on a steel lattice tower located approximately two miles east of the Village of Fort Covington, Franklin County, New York, and extending to the international border, there connecting with a like line owned by the Quebec Hydro-Electric Commission and located in the Province of Quebec;

which facilities are more specifically shown and described in the application and accompanying exhibits heretofore filed in this matter by Permittee. No substantial change shall be made in the above-described facilities and operation thereof authorized by this Permit unless and until such change shall have been approved by the Commission.

Article 3. The operation, maintenance and connection of the aforesaid facilities shall be subject to the inspection and approval of the Division Engineer, Corps of Engineers, United States Army in New York City, who is in charge of the district affected herein, and a representative of the Commission, both of whom shall be authorized representatives of the United States for such purposes. Permittee shall allow officers or employees of the United States showing proper credentials free and unrestricted access into, through and across any lands occupied by said facilities in the performance of their official duties.

Article 4. In the operation, maintenance and connection of the facilities herein specified, Permittee shall place and maintain suitable structures to reduce to a reasonable degree the possibility of contact or inductive interference between such facilities and any other facilities not owned by Permittee.

Article 5. Permittee shall comply promptly with any regulations or instructions affecting the facilities, or any part thereof, owned by it and covered by this Permit which may be issued by the President of the United States or any government department or agency of the United States for the aid and protection of aerial navigation.

Article 6. Permittee shall be liable for all damages occasioned to the property of others by the operation, maintenance, and connection of the facilities owned by it and covered by this Permit, and in no event shall the United States be liable therefor. Permittee shall do everything reasonably within its power to prevent or suppress fires on or near any land occupied under this Permit.

Article 7. Permittee shall arrange for the installation and maintenance of adequate metering equipment to measure the flow of all electric energy transmitted between the United States and Canada over the afore-described line authorized herein; shall make, keep and preserve full and complete records with respect to the movement of such energy; and shall furnish in triplicate to the Commission, with respect to such transmission of energy, reports annually on or before February 15, showing, with respect to the afore-described line authorized herein, the gross amount of kilowatt-hours received or delivered, the maximum rate of transmission in kilowatts, and the consideration paid or received therefor during each month of the preceding calendar year.

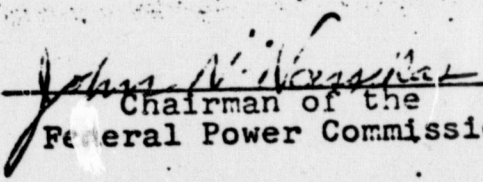
Article 8. Neither this Permit nor the facilities, or any part thereof, covered by this Permit, shall be transferable or assignable, but in the event of the involuntary transfer of the facilities by operation of law (including such transfers to receivers, trustees, or purchasers under foreclosure or judicial sale) the Permit shall continue in effect temporarily for a reasonable time thereafter pending the making of an application for a new Permit and decision thereon, provided notice is promptly given in writing to the Commission accompanied by a statement that the facilities authorized by this Permit remain substantially the same as before the transfer. Permittee shall maintain the facilities, or any part thereof, owned, operated, maintained and connected by it, as described above, in a condition of repair for the efficient operation of said facilities in the transmission of electric energy, and shall make all necessary renewals and replacements.



Article 9. Upon the termination, revocation or surrender of this Permit, the facilities herein authorized, which are owned, operated, maintained and connected by Permittee, shall be removed within such time as the Commission may specify and at the expense of Permittee. Upon failure of Permittee to remove such facilities or any portion thereof, the Commission may direct that possession of the same may be taken and the facilities removed at the expense of Permittee, and Permittee shall have no claim for damages by reason of such possession or removal.

Article 10. When in the opinion of the President of the United States, evidenced by a written order addressed to Permittee, the safety of the United States demands it, the United States shall have the right to enter upon and take possession of the facilities, or any part thereof, owned, operated, maintained and connected by Permittee under this Permit, and all contracts covering the transmission of electric energy by means of said facilities, or any part thereof, and shall retain possession, management and control thereof for such length of time as may appear to the President to be necessary to accomplish said purpose and then restore possession and control to Permittee; and in the event that the United States shall exercise such right, it shall pay to Permittee just and fair compensation for the use of said facilities as may be fixed by the Commission upon the basis of a reasonable profit in time of peace and the cost of restoring said facilities to as good condition as existed at the taking over thereof, less the reasonable value of any improvements that may be made thereto by the United States and which are valuable and serviceable to Permittee.

IN WITNESS WHEREOF, I, John N. Nassikas, have hereunto signed my name this 13th day of September, 1974, in the City of Washington, District of Columbia.

  
Chairman of the  
Federal Power Commission

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Power Authority of the )  
State of New York )

Docket No. E-8414

PETITION FOR REHEARING OF  
THE GREENE COUNTY PLANNING BOARD

This petition for rehearing is filed on behalf of Intervenor Greene County Planning Board ("Greene County"). Greene County hereby requests a rehearing of the Commission's order issued September 13, 1974 in the above matter and the issuance by the Commission of a Presidential Permit to the Power Authority of the State of New York on the same date.

The Commission has erroneously concluded that Section 7 (d) of the Energy Supply and Environmental Coordination Act of 1974 exempts the facility here being applied for from the National Environmental Policy Act of 1969 ("NEPA") and the Federal Power Act. The fact is that Section 7(d) is quite limited and only excuses the Commission from the environmental impact statement requirement of Section 102 of the National Environmental Policy Act. It does nothing more. It does not, for example, as the Commission improperly concluded, direct the summary issuance of a Presidential Permit. It does not, for further example, excuse the Commission from considering alternatives under Section 102(2) (D) of NEPA or from using the procedures required by Section 102(2) (A) and (B) of NEPA.

Furthermore, Section 7(d) does not abrogate the Commission's comprehensive planning responsibilities under the Federal Power Act.

Therefore, the Commission erred in issuing a Presidential Permit without a public hearing, without affording Greene County an opportunity to be heard, without properly studying appropriate alternatives and without using a systematic, interdisciplinary approach taking into account environmental design arts.

A rehearing should be granted and the Presidential Permit should be withdrawn until the Commission processes the application in accordance with law.

Respectfully submitted,

KAFIN AND NEEDLEMAN  
Attorneys for Intervenor  
115 Maple Street  
Glens Falls, New York 12801  
518-793-6631



UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

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Power Authority of the)  
State of New York.

Docket No. E-8414

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FEDERAL POWER  
COMMISSION

PETITION FOR REHEARING OF  
PETER J. O'REILLY

This petition for rehearing is filed by Intervenor Peter J. O'Reilly, who hereby requests a rehearing of the Commission's order dated 9/13/74 in the above matter and the issuance by the Commission of a Presidential Permit to the Power Authority of the State of New York on the same date.

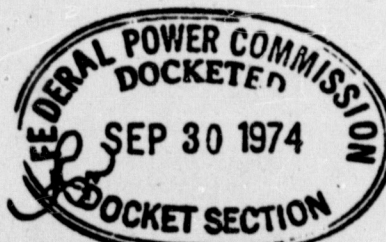
The Commission has erroneously concluded that Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974 exempts the facility here being applied for from the National Environmental Policy Act of 1969 (NEPA) and the Federal Power Act. Actually Section 7(d) is quite limited in scope and only excuses the Commission from the environmental impact statement requirement of Section 102 of the National Environmental Policy Act ..... Nothing more.

It does not, as the Commission improperly concluded, direct the summary issuance of a Presidential Permit. Further, it does not excuse the Commission from considering alternatives under Section 102 (2)(D) of NEPA or from using the procedures required by Section 102(2)(A) and (B) of NEPA.

Furthermore, Section 7(d) does not abrogate the Commission's comprehensive planning responsibilities under the Federal Power Act.

The Commission, therefore, has erred in issuing a Presidential Permit without a public hearing. It appears to this Intervenor that the recent publicity re the conflict of interest of almost the entire FPC executive level is well founded.

A rehearing should be granted forthwith and the Presidential Permit should be withdrawn until the Commission processes the application in accordance with law.



OFFICIAL FILE COPY

TO	FILE	DATE
DOCKET	10-7	

CENTRAL FILES

Dated: September 27, 1974

Respectfully submitted

*Peter J. O'Reilly*

Peter J. O'Reilly

Intervenor

Pro Se

Farney Road

Beaver Falls, N.Y.

(315) 346-6963

03071

E 8414

\* GPO : 1973 O - 480-743



UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION



OCT 29 1974

Before Commissioners: John N. Nassikas, Chairman;  
Albert B. Brooke, Jr., Rush Moody, Jr.,  
William L. Springer, and Don S. Smith.

Power Authority of the  
State of New York

) Docket No. E-8414  
)

*Canadian Border Crossing*  
ORDER DENYING PETITIONS FOR  
REHEARING

(Issued October 25, 1974)

This order denies the petitions filed on September 24 and 30, 1974 by Greene County Planning Board (Planning Board) and Peter J. O'Reilly, respectively, for rehearing of the order and permit issued by the Commission on September 13, 1974, all in Docket No. E-8414.

The permit, signed by the Chairman of the Commission on September 13, 1974 and released on that date by Commission letter to Power Authority of the State of New York (PASNY), authorizes PASNY to construct, operate, maintain and connect certain 765,000 volt facilities at the international border between the United States and Canada in the vicinity of the Village of Fort Covington, Franklin County, New York, for the transmission of electric energy between the United States and Canada, all pursuant to Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319, approved

DC-24

12/24

June 22, 1974, 88 Stat. 246,260), 1/ the provisions of Executive Order No. 10485, dated September 3, 1953 (3 CFR, 1949-1953 Comp., p. 970), and the Commission's Rules and Regulations under said executive order (18 CFR 32.50-32.52). The Commission's order of September 13, 1974 granted intervention in this proceeding, pursuant to Section 1.8 of the Commission's Rules of Practice and Procedure (18 CFR 1.8), to Planning Board, the Association for the Preservation of Durham Valley (Durham Association), and Mr. O'Reilly. Each of those interveners opposed PASNY's application for the permit. The order denied the interveners' requests for (1) the conduct of a public hearing on the application, (2) the preparation of an environmental impact statement covering the proposed electric transmission facilities at the United States-Canadian border and the "entire 765 kv network, and related generation," of which the border facilities are viewed by the interveners as being a part,

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1/ Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974, hereinafter referred to as P.L. 93-319, reads as follows:

In order to expedite the prompt construction of facilities for the importation of hydro-electric energy thereby helping to reduce the shortage of petroleum products in the United States, the Federal Power Commission is hereby authorized and directed to issue a Presidential permit pursuant to Executive Order 10485 of September 3, 1953, for the construction, operation, maintenance, and connection of facilities for the transmission of electric energy at the borders of the United States without preparing an environmental impact statement pursuant to section 102 of the National Environmental Policy Act of 1969 (83 Stat. 856) for facilities for the transmission of electric energy between Canada and the United States in the vicinity of Fort Covington, New York.



and (3) the consolidation of the issues in this proceeding with the issues in two ongoing proceedings involving hydroelectric developments, which are designated as Project Nos. 2685 and 2729. 2/

The petitions for rehearing seek to have PASNY's permit "withdrawn until the Commission processes the application in accordance with law". The grounds for rehearing relied upon by the interveners are, in substance, that the Commission (1) failed to utilize a "systematic, interdisciplinary approach taking into account environmental design arts", follow other prescribed procedures, or consider alternative courses of action, all contrary to the requirements of Section 102(2) (A), (B), and (D) of the National Environmental Policy Act of 1969 (NEPA), (2) failed to carry out "comprehensive planning" responsibilities imposed by the Federal Power Act, (3) improperly concluded that Section 7(d) of P.L. 93-319 directed the "summary issuance" of the permit to PASNY and acted accordingly, (4) erred in issuing the permit without holding a public hearing, and (5) denied Planning Board an opportunity to be heard.

In asserting that the "Commission has erroneously concluded that Section 7(d) of the Energy Supply and Environmental Coordination Act of 1974 exempts the facility here being applied for from the National Environmental Policy Act of 1969", Planning Board and Mr. O'Reilly recognize that the Commission is not required by reason

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2/ PASNY is the licensee of Project No. 2685 (Blenheim-Gilboa Project) and the applicant for license for Project No. 2729 (Breakabeen Project). Planning Board and Durham Association are interveners in both project proceedings.

of Section 7(d) of P.L. 93-319 to prepare an environmental impact statement under NEPA in connection with the issuance of the permit to PASNY 3/, but the interveners contend that the Commission must comply with various other provisions of Section 102(2) of NEPA, referred to above, in considering PASNY's application for the permit. The legislative history of Section 7(d) shows, however, that the interveners' contention is without merit. That history discloses that Congress intended all provisions of NEPA to be inapplicable to the Commission's action concerning the transmission facilities which are covered by the permit. Such Congressional intent is manifested in the Conference Report on H.R.14368, the bill which was enacted into law as P.L. 93-319. The Joint Explanatory Statement of the Committee of Conference, in explaining the effect of the bill, says that Section 7 "contained\*\*\*an exemption of a Canada-New York State transmission line from the requirements of the National Environmental Policy Act". See House Report No. 93-1085, dated June 6, 1974, 93D Congress, 2d Session, pp. 16, 23,41.

Planning Board and Mr. O'Reilly misconceive the nature of this proceeding when they argue, in substance, that PASNY's proposed transmission facilities at the United States-Canadian border are subject to the Commission's "comprehensive planning" responsibilities under the Federal Power Act. PASNY's application for the permit for those facilities was correctly filed under Executive Order No. 10485 and not under the Power Act. The proposed facilities do not constitute a "project" within the meaning of Sections 3(11) and 10(a) of the Power Act, and, accordingly, such facilities are not subject to the Commission's "comprehensive plan" judgment under Section 10(a). In short, the Commission's licensing jurisdiction under Part I of the Power Act does not extend to the 765 kv transmission line

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3/ The text of Section 7(d) of P.L. 93-319 is set forth in footnote 1/, above.



and related facilities which were the subject of PASNY's application. Furthermore, the Commission's duty under Section 202(a) of Part II of the Power Act to promote and encourage the interconnection and coordination of electric generation and transmission facilities is geographically limited, by Section 202(a)'s terms, to facilities situated within the United States. The Commission has, however, encouraged the interconnection of electric systems located in the State of New York and the Province of Quebec through the issuance of the permit to PASNY. In so doing, the Commission has properly exercised certain authority delegated to it by the President of the United States under Executive Order No. 10485, all as contemplated by Section 7(d) of P.L. 93-319.

Contrary to the contentions of Planning Board and Mr. O'Reilly, there was no "summary issuance" of the permit to PASNY. In accordance with Congressional directions contained in Section 7(d) of P.L. 93-319, the Commission issued the permit after fully complying with the requirements of Executive Order No. 10485, which include finding such issuance to be consistent with the "public interest" and obtaining the "favorable recommendations" of the Secretaries of State and Defense, all as set forth in the permit. The language employed by Congress in Section 7(d), including such words and phrases as "expedite", "prompt construction", and "reduce the shortage", clearly indicates a sense of urgency in processing the application for the permit and leaves no doubt that Congress expected the Commission to act on that application as soon as possible. In any event, the objections of Planning Board and Mr. O'Reilly to PASNY's application have been considered by the Commission and an evidentiary hearing on those objections is not necessary or appropriate for purposes of the Commission's discharge of its responsibilities under Section 7(d) and Executive Order No. 10485, as pointed out below.

Turning to the requests of Planning Board and Mr. O'Reilly for a public hearing on their objections to PASNY's application for the permit, it is undisputed that the interveners do not reside in, or represent residents of, Franklin County, New York, where PASNY proposes to construct and operate the subject transmission facilities and to connect them with similar facilities of the Quebec Hydro-Electric Commission at the New York-Quebec border. It appears that Planning Board serves as an advisory body for the legislature of Greene County, New York, the northern boundary of which is approximately 180 miles south of the site of the proposed international interconnection of the transmission facilities. The communities of Beaver Falls and Watson in Lewis County, New York, where Mr. O'Reilly appears to reside and own real estate, are approximately 90 miles southwest of that site. Prevention of physical, economic or environmental injury or damage to lives and property in Greene and Lewis Counties resulting from PASNY's construction and operation of transmission lines is primarily the responsibility of the Public Service Commission of the State of New York (New York Commission) rather than of the Federal Power Commission since our jurisdiction over PASNY's transmission system extends only to those lines which are parts of hydroelectric projects or are located at the United States-Canadian border. In its application (p. 4), PASNY states that it has applied to the New York Commission for a "Certificate of Environmental Compatibility and Public Need for the 765 kv \* \* \* transmission line facilities to be constructed in the United States to transmit energy to and from the connection at the border \* \* \*". It would therefore be appropriate for the interveners to submit their objections regarding PASNY's construction program for its transmission system to the New York Commission. No claims of injury or damage have been made in this proceeding by any resident or public official or agency of Franklin County. The conditions included in PASNY's permit, and upon which it was issued, are designed for the purpose of, among other things, preventing injury or damage in the area to be occupied by the proposed facilities. 4/

4/ Articles 3 through 6 and Article 8 of the permit constitute examples of such conditions.



Under the foregoing circumstances, there are no factual issues relevant to this Commission's consideration of PASNY's application which require an evidentiary hearing for resolution. Accomplishment of the energy-saving objective of Section 7(d) of P.L. 93-319 would, of course, be delayed by such a hearing. The Commission is, therefore, not persuaded that any useful purpose would be served by holding the hearing sought by the interveners.

The detailed discussion of Planning Board's objections to PASNY's application for the permit contained in the Commission's order of September 13 demonstrates that there is no basis for Planning Board's assertion that it was not afforded an opportunity to be heard. Furthermore, an additional opportunity has now been afforded as reflected in this order on Planning Board's petition for rehearing.

The Commission finds:

The assignments of error and grounds for rehearing set forth in the petitions for rehearing of the order and permit issued September 13, 1974 present no facts or principles of law which were not considered by the Commission when it issued the order and permit or which, having now been considered, warrant the order being modified or the permit being vacated.

The Commission orders:

The petitions of Greene County Planning Board and Peter J. O'Reilly for rehearing of the order and permit issued by the Commission on September 13, 1974 are hereby denied.

By the Commission.

( S E A L )

Kenneth F. Plumb,  
Secretary.

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

Greene County Planning Board,	)	
Petitioner	)	
	)	
v.	)	
	)	
Federal Power Commission,	)	
Respondent	)	No. 74-2638
	)	
Power Authority of the State of New York,	)	
Intervenor	)	

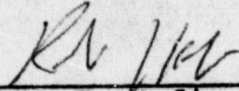
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the  
Petitioner's joint appendix by mailing one copy thereof to  
each of the following counsel at the addresses below:

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Dated: June 20, 1975

  
\_\_\_\_\_  
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Greene County Planning Board